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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/454).

The Counter-Terrorism Committee has received the attached supplementary report from Venezuela, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 24 July 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Venezuela to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to address you in connection with the communication of 8 July 2002, by which the Mission transmitted a report supplementary to the report submitted by the Bolivarian Republic of Venezuela on 26 December 2001 in implementation of Security Council resolution 1373 (2001).

Enclosure

Clarifications submitted by the Bolivarian Republic of Venezuela to the United Nations concerning measures taken in implementation of Security Council resolution 1373 (2001)*

Paragraph 1 (a)

Could Venezuela please outline the legislative provisions and procedures that enable its economic and financial system to guard against operations carried out by criminal organizations.

Venezuelan law has a series of provisions governing economic and financial transactions that provide for procedures and penalties to guard against operations carried out by criminal organizations; most of the provisions are contained in three legal instruments:

1. The General Act on Banks and Other Financial Institutions
2. The Organic Law on Narcotic Drugs and Psychotropic Substances
3. Resolution No. 185-01 issued by the Office of the Superintendent of Banks and Other Financial Institutions

The new General Act on Banks and Other Financial Institutions, in keeping with the thrust of other current national legislation and accepted principles of effective banking supervision, mandates banking practices and procedures that promote high ethical and professional standards to prevent the use of the banking system by criminal organizations. For that purpose, under article 226 of the Act a National Financial Intelligence Unit (UNIF) was created within the functional structure of the Office of the Superintendent of Banks and Other Financial Institutions (SBIF). The Unit functions as a central clearing house; it receives, analyses and classifies reports of suspicious activities submitted by the institutions, firms and individuals subject to its supervision and forwards them to the Public Prosecutor's Office. In addition, it gathers financial information (both objective and subjective) on suspicious activities to assist the criminal investigation authorities.

The Organic Law on Narcotic and Psychotropic Substances requires the Venezuelan financial system to design and develop policies and plans to protect itself against the laundering of proceeds of drug trafficking. In that regard, article 213 requires the national executive branch, through the appropriate agencies, to design and develop an operating plan including preventive measures at the national level to keep the banking and financial system from being used to launder funds and economic assets deriving from the commission of the crimes specified in the Law or from activities related thereto.

Article 37 of the Law provides that anyone who, directly or through the intermediary of another natural or juridical person, transfers funds or proceeds deriving from trafficking in narcotic and psychotropic substances and related activities mentioned in the Law shall be subject to from 15 to 25 years' imprisonment.

* The annexes are on file with the Secretariat and are available for consultation.

Resolution No. 185-01 of 12 September 2001 (Rules applicable to entities regulated by the Office of the Superintendent of Banks and Other Financial Institutions on the prevention, control and inspection of money-laundering operations) requires the institution of modern mechanisms for monitoring and controlling the flow of funds, since the entities regulated by the Office of the Superintendent of Banks and Other Financial Institutions may be used by persons engaging in illegal activities.

The resolution also requires consultation, inspection and investigation in the case of operations and transactions in foreign currency with any part of the world that involve $10,000.00 or more, operations and transactions through an offshore centre that involve $3,000.00 or more, border exchange transactions that involve $2,000.00 or more and transfers from Latin American drug-producing countries that involve $750.00 or more. For transactions and operations in national currency, the threshold amount is 4,500,000.00 bolívares.

According to the resolution, it is the responsibility of the Government and of the stockholders, administrators, directors and staff of the regulated entities to prevent the entities from being used as intermediaries for money-laundering. To that end, they are required to set up information and electronic data-processing systems and control procedures aimed at detecting operations that involve the laundering of funds deriving from illegal activities and to assemble the necessary records for reporting to the competent authorities.

Are financial intermediaries other than banks (e.g., attorneys, notaries) required to report suspicious transactions to the public authorities, and if so, what penalties apply if such persons omit to report either wilfully or negligently?

Financial institutions, registries and public notaries are required to report to the criminal investigation authorities all banking transactions that are unusual or that exceed the amounts indicated above in national or foreign currency. Within the Scientific Criminal and Forensic Investigation Force an investigative unit called the Anti-Money-Laundering Division has been set up to be responsible for financial follow-up of all such unusual banking transactions.

Are the provisions described in the report applicable to all criminal offences, including terrorist financing, or only to money-laundering offences?

The provisions described are applicable to the offence of money-laundering and to the offence of terrorism, if the latter is connected to organized crime, which is in effect defined as a crime within the Venezuelan legal system through the act ratifying the United Nations Convention against Transnational Organized Crime, signed in Palermo in 2000 and confirmed on 14 August 2001. The purpose of the Convention is to promote cooperation to prevent, investigate and combat organized crime more effectively. The legal instrument stipulates that the States Parties shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, and, where appropriate, other bodies within its competence that are particularly susceptible to money-laundering that is considered a transnational crime.

Moreover, a draft organic law against organized crime and a draft special law against terrorist acts, both of which have been approved on first reading in the

National Assembly, define the offence of terrorism as an independent offence and also penalize financial actions in support of such an offence.

In addition, the Office of the Superintendent of Banks and Other Financial Institutions issued circular No. SBIF-UNIF-DPC-0563 instructing financial institutions about their obligation to report operations that they find or suspect are related to the laundering of funds deriving from activities connected with organized crime or intended for the financing of terrorism.

Please outline Venezuela's legislation relating to bank secrecy. What means exist for displacing it for the purpose of a criminal investigation?

The General Act on Banks and Other Financial Institutions makes an exception to the general principle that requires financial institutions to maintain bank secrecy. Article 233 of the Act provides that data or information obtained by the Office of the Superintendent of Banks and Other Financial Institutions in its functions of inspection, supervision and oversight shall be turned over on request to the President of the Republic, the Executive Vice-President of the Republic, the President of the National Assembly, the Ombudsman, the Attorney General, the Comptroller General, the presiding justices of the divisions of the Supreme Court of Justice, the Prosecutor General, the Minister of the Interior and Justice, the Ministry of Defence, the judiciary, the tax authorities, as the laws require, and the agencies mentioned in cooperation agreements concluded with other countries. When circumstances require, the information referred to above may be provided to the President of the National Banking Council and to banking and financial supervisory authorities of other countries.

Moreover, article 252 of the Act states that bank secrecy cannot be cited as a reason for refusing requests for information from the Office of the Superintendent of Banks and Other Financial Institutions in the exercise of its functions.

In addition, the Organic Law on Narcotic and Psychotropic Substances, in articles 214 and 215, provides that bank secrecy may not be cited as a reason for refusing requests for information from the authorities, or for failing to produce a report on the banking institution's own initiative when it suspects money-laundering.

Paragraph 1 (b)

Please outline the provisions which exist for the suppression of the financing of terrorism

There are at present no specific provisions in Venezuelan law directed at suppressing the financing of terrorism. However, as a State Member of the United Nations, Venezuela is required to comply with Security Council resolution 1373 (2001) of 28 September 2001 and has therefore taken steps to prevent and suppress the financing of terrorist acts, freeze assets and economic resources of persons involved in such activities and prohibit its nationals and other persons within its territory from assisting with such financing; it is thus complying with the obligation imposed on Member States by resolution 1373 (2001), as further explained under paragraph 1 (a).

Moreover, on 16 November 2001 Venezuela signed the International Convention for the Suppression of the Financing of Terrorism. The Venezuelan Ministry of Foreign Affairs is currently taking the necessary steps to have the legislature fulfil the domestic requirements for ratification in accordance with the Constitution of the Bolivarian Republic of Venezuela.

At the regional level, on 3 June 2002 Venezuela signed the Inter-American Convention against Terrorism, which was adopted at the thirty-second regular session of the General Assembly of the Organization of American States (OAS).

The Convention presents some innovations that are highly important from a legal and political standpoint, such as article 15 on human rights and the treatment of asylum with the aim of preserving that institution. Political offences or offences connected with political offences are excluded from the scope of the Convention, which at the same time provides that political asylum may not be used as a cover by those presumed to have committed terrorist acts. Another important benefit of the Convention is that it promotes broad cooperation among the States parties in preventing and suppressing terrorist acts, including both domestic measures and cooperation on border controls, among law enforcement authorities, through mutual legal assistance and through OAS. The Convention also establishes a flexible mechanism for consultations among the States parties to consider and review its implementation in the light of its aims and objectives.

As a signatory, even though not yet a party, to these conventions, Venezuela is required by international law to ensure that its conduct conforms to their provisions.

The National Assembly is currently debating a draft law against organized crime and a draft special law against terrorist acts, both of which would contain provisions for the suppression of activities connected with the financing of terrorism.

Article 4 of the draft special law against terrorist acts, for example, stipulates that anyone who, directly or indirectly, by any means provides or collects funds intended to be used to commit terrorist acts shall be subject to a penalty of from 15 to 25 years' imprisonment.

Furthermore, article 5 of the draft law provides that anyone who participates in the financing of terrorist acts by laundering funds deriving from illicit drug trafficking or any other activity related to organized crime, either by converting the funds into other assets or transferring them to other countries using any method employed in the banking or financial system or by distributing them for introduction into economic circulation in the country so as to conceal their origin, ownership or other potentially illicit aspects, shall be subject to a penalty of from 20 to 30 years' imprisonment.

Paragraph 1 (c)

Please provide a copy of article 218 of the Organic Code of Criminal Procedure. Are these legal provisions also applicable to the seizure or freezing of economic assets?

Organic Code of Criminal Procedure, article 218:

> "In the course of the investigation of a criminal act, the Public Prosecutor's Office, with authorization from the examining magistrate, may seize correspondence and other documents that are presumed to have been produced by the perpetrator of the punishable act or sent by such person and that may be related to the acts that are being investigated.
>
> Similarly, the Public Prosecutor's Office may order the seizure of documents, certificates, securities and sums of money held in bank accounts or safety deposit boxes or by third parties, when there are reasonable grounds for believing that they are connected with the criminal act that is being investigated.
>
> In the circumstances contemplated in this article, the criminal investigation police may, in cases of need and urgency, request the corresponding order directly from the examining magistrate upon prior authorization, by whatever means, of the Public Prosecutor's Office, which must be noted in the request."

As the article quoted above shows, these provisions are also applicable to the seizure or freezing of economic assets.

Paragraph 1 (d)

Please describe the preventive controls and surveillance measures which ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations.

There are currently no preventive controls in Venezuela to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations. However, the executive and legislative branches are discussing the adoption of legislation on that subject.

Paragraph 2 (a)

How does Venezuela control the establishment in its territory of paramilitary groups that have the potential to engage in terrorist activities?

The State security bodies (the Military Intelligence Directorate (DIM), the General Sectoral Directorate of Police Intelligence (DISIP)) continuously monitor all groupings that might be likely to engage in paramilitary activities. There are at present no groupings of that type in Venezuela.

Please describe the measures which prevent terrorists obtaining weapons within or outside Venezuela's territory, in particular small arms or light weapons. Please outline the legislation concerning the acquisition and possession, and import and export, of such weapons.

When the draft law on acts of a terrorist nature has been approved by the national legislative branch, the country will have the means of taking the executive measures necessary to ensure that terrorists do not obtain weapons within or outside Venezuelan territory.

With regard to legislation concerning the acquisition, possession, import and export of weapons the Arms and Explosives Act published in *Gaceta Oficial No. 19.900,* dated 12 June 1939, provides in article 7 that the import, manufacture, carriage, possession and concealment of weapons of war and ammunition by individuals shall be punishable in accordance with the provisions of the Venezuelan Penal Code; similarly, in articles 12 and 14 it specifies provisions and regulations for the use of explosives.

It is important to emphasize that Venezuela has signed the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials of 14 November 1997 and that it now hopes to be able to complete the domestic requirements specified in the Constitution for its ratification, as the National Assembly has approved the Act approving that Convention which was published in *Gaceta Oficial No. 37.357* of 4 January 2002.

Paragraph 2 (c):

Please describe the main provisions of Venezuela's legislation relating to immigration control and the granting of the right of asylum. What are the safeguards in place to prevent criminal groups abusing those provisions?

The Aliens Act of 17 July 1937 sets out the legal framework for the control of immigration together with the procedures for the admission, stay and expulsion of aliens in Venezuela. The main provisions are set out below.

> "Article 6. Any alien coming to Venezuela for admission into its territory must be in possession of a passport issued by the competent authority of his country and stamped by the Venezuelan consular official in the port of embarkation or in the appropriate frontier town, or by such official in the nearest place.
>
> Article 7: No Venezuelan consular official shall issue or stamp a passport unless the person concerned produces an identity document confirming his name and forename, age, civil status, nationality and last place of residence.
>
> Similarly, the alien must produce an attestation of good behaviour and a certificate of vaccination no more than seven years old. The documents specified in this article shall be returnable; and the person concerned must retain them to meet the requirement of article 17 of this Act.
>
> Article 8: The Venezuelan consular official shall in every case verify the resources available to the alien and whether they are adequate to cover the deposit prescribed in article 11 of this Act, and the profession or occupation in which he intends to engage or the purpose of his journey to Venezuela.

Article 9: The passport specified in article 6 may also be issued to a foreign subject or citizen by a Venezuelan consular official.

Article 10: Subject to an international agreement based on reciprocity, passports issued by a competent authority which are valid for a period no greater than one year and are issued to aliens who, because of their lawful activities, need to enter and leave Venezuelan territory frequently shall be accepted for the purposes of article 6 of this Act.

The 'stamp' of the Venezuelan consul or agent shall be valid for the same period as the passport without prejudice to the right of the territorial authorities not to admit the alien on grounds of facts or circumstances subsequent to the date of the consular 'stamp' or the issue of the passport.

Article 16: The Venezuelan consular official shall not stamp the passport of an alien or issue the passport if the alien lacks the necessary resources to make the deposit provided for in article 11 of this Act.

Similarly, he shall not stamp or issue a passport to any alien who does not meet the conditions for admission or whose presence in Venezuela is undesirable, in accordance with this Act; the reasons for not so doing shall be notified by the most expeditious means to the federal executive branch through the Ministry of Foreign Affairs.

Article 17: An alien arriving in Venezuela shall be obliged to report to the first civilian authority at his place of residence within eight days of his arrival and shall submit to the authority the documents referred to in articles 6 and 7 of this Act. Career diplomatic agents and consuls accredited in Venezuela, their families and persons travelling with them in their service shall be exempt from compliance with the formalities set forth in this article and from those required by articles 6 and 7.

Article 21: A register shall be kept in the Ministry of Internal Relations of all aliens legally entering the Republic on the basis of information that shall be sent for that purpose to the Ministry by the authorities in each place of entry.

Article 22: The establishment or change of domicile or residence of aliens within the national territory shall be notified by them to the first civil authority of the place of domicile or residence chosen by them; the information shall be notified to the Ministry of Internal Relations by the competent body.

Article 32: The following shall be denied entry to Venezuelan territory:

1. An alien whose presence may disturb internal public order or compromise the international relations of the Republic.

2. An alien to whom any of the reasons for exclusion specified in the Immigration and Settlement Act apply.

3. An alien who is of bad character or is without means of subsistence or a lawful profession or occupation to provide such means of subsistence.

4. An alien who has committed an offence under ordinary law established by and punishable under Venezuelan law, until such time as he has served his sentence or the statutory limitation period for the offence or the penalty has expired.

5. An alien of less than 16 years of age who on arrival is not under the supervision of another passenger or is not due to be placed under the protection of a person in good standing resident in the country.

6. An alien who is a member of any association, or espouses any cause, that is incompatible with public or civil order or who advocates communism, the violent destruction of established governments or the assassination of national or foreign public officials.

7. An alien who is suffering from leprosy, trachoma, mental derangement, grand mal epilepsy, or any other illness that may be a threat to public health or become a burden for the nation.

8. Barmen, peddlers, vendors of or dealers in shoddy goods or articles and, in general, any alien who earns his livelihood from the petty exploitation of the working class.

9. Aliens who are considered by the immigration authorities of the country as individuals whose character and situation make them manifestly undesirable for immigration into Venezuela.

10. An alien who does not fulfil the requirements set forth in articles 6, 7, 11, 18 and 19 of this Act.

11. In general, any alien whom the President of the Republic considers to be inadmissible.

Single paragraph: The federal executive branch may, if it considers it desirable and taking such measures as it deems necessary, permit the entry into the national territory of aliens referred to in paragraphs 2 and 9 of this article, provided they come to Venezuela on a temporary basis. In such cases the Venezuelan consular officials, in accordance with their orders, shall make a written record in the passports and other relevant documents of the length of time the alien is permitted to remain in the country.

Article 35: In the event of the suspension of the constitutional guarantees under article 36 of the National Constitution, the President of the Republic may detain, arrest or expel aliens who are opposed to the re-establishment or maintenance of peace.

Article 37: The following shall be considered undesirable aliens liable to expulsion:

(a) Anyone who has settled in the national territory having circumvented, evaded or in geheral infringed the laws and regulations concerning admission.

(b) Anyone who is a danger to security or public order.

(c) An alien who has settled in the national territory and has been sentenced and has not served his sentence or is subject to judicial proceedings in another country for offences defined and punishable under Venezuelan legislation, except where such offences are of a political nature.

(d) Anyone who interferes with international relations.

(e) In general, an alien who acts in a manner incompatible with neutrality and any of the requirements of articles 28 and 29 of this Act.

(f) Anyone who, on being requested by the competent authorities, is unable to identify himself, fails to give his true name or conceals his identity or domicile.

(g) Anyone who uses or carries false or counterfeited identity documents or refuses to produce the correct ones."

The regulations of the Aliens Act of 7 May 1942 supplement the provisions of the Act.

With respect to the right of asylum, it is necessary to state at the outset that article 69 of the Constitution of the Bolivarian Republic of Venezuela recognizes and guarantees the right of asylum and refuge; similarly, the fourth transitory provision provides that, within the first year following the instalment of the National Assembly, an Organic Law on Refugees and Asylum Seekers shall be adopted. Accordingly, on 3 October 2001 such a law was published in *Gaceta Oficial No. 37.296*.

For the purposes of ensuring that criminal groups do not abuse the right to asylum granted by the Constitution, the Organic Law provides in article 41 that: "Asylum may not be granted to any person who has been indicted or sentenced by any regular competent court for crimes under ordinary law or has committed offences against peace, war crimes or crimes against humanity defined in international instruments".

In the light of that provision, it may be seen that there are well defined circumstances that prevent the State from granting refugee status to those persons who are governed by the provisions set forth in the above-mentioned rules.

Paragraph 2 (e)

The report does not make clear whether there exists specific legislation aimed at preventing and suppressing acts of terrorism in Venezuela. Please elaborate on this point and outline the relevant legal provisions.

The legal provisions currently in force in Venezuela do not establish terrorism as an independent offence; however, the National Assembly approved the Act against Organized Crime at first reading (6 September 2001) the purpose of which is to prevent, investigate, prosecute and punish offences committed by organized crime, to establish the offences that are deemed to be characteristic of, or specific to, such criminal organizations and define the membership of organized criminal associations.

Article 9 of the Act provides that anyone belonging to and/or acting in the service of, or collaborating with, armed gangs, organizations or groups engaged in organized crime the purpose of which is to subvert the constitutional order and the democratic institutions or to seriously impair public peace and to cause criminal damage, disasters or fire, or to explode mines, bombs or other explosive devices established in the Penal Code and in the Act, respectively, shall be punished by a term of imprisonment of between 10 and 15 years.

In the same context, on 29 November 2001, the National Assembly approved at first reading the draft special law against terrorist acts the purpose of which is to prevent and punish acts that may be regarded as being of terrorist nature. To that end, it imposes a term of imprisonment of between 15 and 25 years penal servitude on any person committing the acts established therein as terrorism. It also imposes a term of between 20 and 30 years penal servitude on anyone taking part in and financing terrorist acts through the process of laundering the proceeds of illicit drug trafficking.

What is the extent of the competence of the courts to deal with terrorist acts, or preparations for terrorist acts, that occur outside Venezuelan territory?

In accordance with the provisions of article 4.2 of the Venezuelan Penal Code:

"The following shall be subject to judicial process in Venezuela and shall be punished in accordance with the criminal law:

1. Venezuelans who, in a foreign country, are accused of treason against the Republic and who commit acts against one another that are punishable under its laws.

2. Foreign subjects or citizens who, in a foreign country, commit any offence against the security of the Republic or against any of its nationals."

It is clear from the above text that Venezuelan courts are competent to investigate, prosecute and, where appropriate, try any offence committed outside Venezuelan territory against the Republic; such acts clearly include terrorist acts or preparations for terrorist acts.

Are there relevant provisions of the Penal Code of Venezuela applicable in all the following circumstances?

Acts committed outside Venezuela by a person who is a citizen of, or habitually resident in, Venezuela (whether that person is currently present in Venezuela or not);

Acts committed outside Venezuela by a foreign national who is currently in Venezuela?

In practice the circumstances mentioned above are covered under our substantive penal law (Penal Code of Venezuela) which provides in article 4:

"The following shall be subject to judicial process in Venezuela and shall be punished in accordance with the criminal law:

1. Venezuelans who, in a foreign country, are accused of treason against the Republic and who commit acts against one another that are punishable under its laws.

2. Foreign subjects or citizens who, in a foreign country, commit any offence against the security of the Republic or against any of its nationals.

In the two cases above, the accused must have come to the territory of the Republic and the proceedings must have been initiated by the aggrieved party,

or by the Public Prosecutor's Office, in cases of treason or offences against the security of Venezuela.

Furthermore, the accused must not have been tried by foreign courts, except where a trial has taken place and the accused avoided sentence.

3. Venezuelans or foreigners who, without the authorization of the Government of the Republic, manufacture, acquire or send arms bound for Venezuela, or in any manner promote their entry into Venezuelan territory.

4. Venezuelans who, while in a foreign country, break laws relating to the marital status and legal capacity of Venezuelans.

5. Diplomatic agents in the cases permitted by international public law in accordance with the National Constitution.

6. Diplomatic agents of the Republic who misconduct themselves in discharging their functions or who commit any punishable offence that is not subject to legal process in the place of their residence because of the privileges inherent in their status.

7. Employees and other members of the personnel and crew of Venezuelan naval vessels and combat aircraft by reason of the commission, in any place, of punishable acts.

8. The captains, or masters, other staff and crew, together with passengers, of merchant ships of the Republic, for punishable acts committed on the high sea or on board ship in the waters of another country, except, however, with respect to passengers, as provided in the second subparagraph of paragraph 2 of this article.

9. Venezuelans or foreigners arriving in the Republic who, on the high sea, commit acts of piracy or other offences characterized by international law as atrocities or crimes against humanity, except where they have already been tried in another country and have served their sentence.

10. Venezuelans who, within or outside the Republic, take part in the slave trade.

11. Venezuelans or foreigners coming to the territory of the Republic who, in another country, counterfeit or take part in the counterfeiting of currency that is legal tender in Venezuela, seals in official use, stamps or credit instruments of the Nation, banknotes or equities, or annuity bonds authorized for issue by the national legislation.

12. Venezuelans or aliens who, in any manner, promote the introduction into the Republic of the assets specified in the preceding paragraph.

The cases specified in the preceding paragraphs shall remain subject to the provisions of the second subparagraph of paragraph 2 of this article.

13. The commanding officers, other officers and other members of an army, by reason of punishable acts committed by them, when crossing neutral foreign territory, against the inhabitants thereof.

14. Aliens who enter parts of the Republic that are not open to foreign trade or who, without entitlement, seize the products of the land, sea, lakes or rivers

of such parties, or who, without permission or title, make use of their uninhabited lands.

15. Aliens who infringe quarantine regulations and other provisions established for the benefit of public health.

16. Aliens or Venezuelans who, in time of peace, from foreign territory, warships or aircraft, launch projectiles or inflict other harm on Venezuelan towns, inhabitants or territory, except as provided in the two subparagraphs of paragraph 2 of this article."

Paragraph 2 (f)

Please describe the institutional mechanism available in Venezuela for the exchange of operational information. Does Venezuela have a law relating to the provision of mutual assistance to other countries?

The Office of the Superintendent of Banks has signed a Memorandum of Understanding for the exchange of financial information through the National Financial Intelligence Unit (UNIF) with the following countries: Colombia, Spain and the United States of America (signed with the Embassy of the United States of America, on 16 September 1999, for cooperation and exchange of information).

The exchange of information also takes place through the Financial Crimes Enforcement Network, with the Federal Bureau of Investigation (FBI) and Interpol which is the body responsible in Venezuela for maintaining the exchange of intelligence information jointly with the General Sectoral Directorate of Police Intelligence (DISIP) and the Scientific Criminal and Forensic Investigation Force (CIPC).

In the international legal field, Venezuela, on 14 January 1996, signed and ratified the Inter-American Convention on Mutual Assistance in Criminal Matters.

With regard to the provision of mutual assistance to other countries, Venezuela, as a member of the Organization of American States, signed and ratified as of 25 August 1948, the Inter-American Treaty of Reciprocal Assistance. The Meeting of Consultation of the Organization of American States unanimously decided to apply that treaty and, accordingly, Venezuela has supported that body, bearing in mind that the purpose of the international instrument is hemispheric cooperation for the purpose of preventing and suppressing threats and acts of aggression against any of the countries of the American continent.

Paragraph 2 (g)

Is there a law on extradition in Venezuela, or is extradition governed by bilateral treaties or non-treaty arrangements only?

There is currently no law on extradition in Venezuela and in practice extradition is governed solely by bilateral treaties or non-treaty arrangements. However, article 271 of the Constitution provides that: "In no case may the extradition of aliens responsible for crimes involving money-laundering, drugs, organized international crime, attacks against the public property of other States and against human rights, be refused. There shall be no time limit in respect of judicial action designed to punish crimes against human rights or against public property or

drug trafficking. Similarly, subject to a judicial decision, the property deriving from activities related to such offences shall be confiscated."

The Venezuelan Penal Code provides in that connection in article 6 that:

> "The extradition of a Venezuelan may not be granted on any grounds; but he must be tried in Venezuela, at the request of the aggrieved party or of the Public Prosecutor's Office, if the crime of which he is accused is punishable under Venezuelan law.
>
> The extradition of an alien may not be granted for political offences or for breaches of law relating to such offences, or for any action not established as an offence by Venezuelan law.
>
> The extradition of an alien for ordinary crimes may be granted only by the competent authority, in accordance with the procedures and requirements established for that purpose by the international treaties signed by Venezuela and which are in force or, failing that, by Venezuelan legislation ..."

With respect to extradition, Venezuela has signed and ratified a series of international treaties and conventions, for example the Extradition Treaty between the Republic of Venezuela and the Kingdom of Spain, published in *Gaceta Oficial No. 34.476* of 28 May 1990. By that instrument Venezuela undertakes to deliver persons being prosecuted by the judicial authorities of the other Party on grounds of the commission of terrorist acts as defined in that instrument.

Paragraph 3 (c)

Please provide a list of the relevant bilateral and multilateral agreements to which Venezuela is a party.

The international conventions concerning terrorism that have been signed and ratified by Venezuela are the following:

1. The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. The Venezuelan legislature approved the Convention on 27 May 1982 and it was ratified by the executive branch on 13 June 1982 and published in *Gaceta Oficial No. 2.975 Extraordinario* of 2 July 1982. This instrument authorizes the aircraft commander to impose reasonable security measures on any person who has committed or is about to commit an offence and requires the States parties to take offenders into custody.

2. The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. The legislature approved the Convention on 4 November 1982 and it was ratified by the executive branch on 5 April 1983 and published in *Gaceta Oficial No. 32.700* of 7 April 1983. The Convention requires States parties to impose severe penalties on persons who seize or attempt to seize aircraft and to extradite the offenders or bring them to justice.

3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971. The legislature approved the Convention on 16 December 1982, it was ratified by the executive branch on 23 March 1983 and published in *Gaceta Oficial No. 32.740* of 3 June 1983. The Convention requires the imposition of severe penalties and the extradition or bringing to justice of offenders.

4. The International Convention against the Taking of Hostages, adopted by the United Nations General Assembly in New York on 18 December 1979. It was approved by the legislature on 24 August 1988, ratified by the executive branch on 7 October 1988 and published in *Gaceta Oficial No. 34.069* of 10 October 1988. The States parties agree that the taking of hostages shall be punishable by appropriate penalties; they undertake to prohibit certain activities in their territory and to exchange information and institute criminal or extradition proceedings.

5. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted at Montreal in 1988. Venezuela has only signed this Protocol.

6. In November 2001, Venezuela signed the International Convention for the Suppression of the Financing of Terrorism, adopted in New York in 1999.

7. On 7 November 1973, Venezuela ratified the Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and related Extortion that are of International Significance. It was signed at the third special session of the General Assembly of the Organization of American States held in Washington, D.C. on 2 February 1971. It was published in *Gaceta Oficial No. 30.223* of 5 October 1973.

8. It is also important to mention that, on 25 August 1948, Venezuela, as a member of the Organization of American States, ratified the Inter-American Treaty of Reciprocal Assistance which was signed at Rio de Janeiro in September 1947.

9. The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly in 1997, was signed but has not been ratified by the National Legislative Commission.

The annex contains a summary table, updated to June 2002.

Are there laws in force specifically to implement the relevant conventions and protocols relating to terrorism already ratified by Venezuela or is their implementation provided for by the penal laws of Venezuela? Please outline any relevant laws.

The Constitution of the Bolivarian Republic of Venezuela, as the supreme legal instrument, provides in article 23 that: "The treaties, covenants and conventions relating to human rights signed and ratified by Venezuela have constitutional force and shall prevail in the internal order to the extent that they comprise standards on the enjoyment and exercise of human rights more favourable than those established in the Constitution and in the legislation of the Republic, and shall be immediately and directly applicable by the courts and other governmental bodies."

Article 154 of the Constitution sets forth the procedure to be followed in connection with international treaties signed by the Republic and provides that treaties adopted by the Republic must be approved by the National Assembly and subsequently by the President of the Republic in order to be ratified. Upon ratification, an international treaty automatically becomes a law within the current Venezuelan legal framework, ratification being the process whereby the State, under its domestic law, establishes the requirements to undertake binding international obligations.

Paragraph 4

Has Venezuela addressed any of the concerns expressed in paragraph 4 of the resolution?

There is so far no indication that situations described in paragraph 4 of the resolution have arisen.

Other matters

Could Venezuela please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

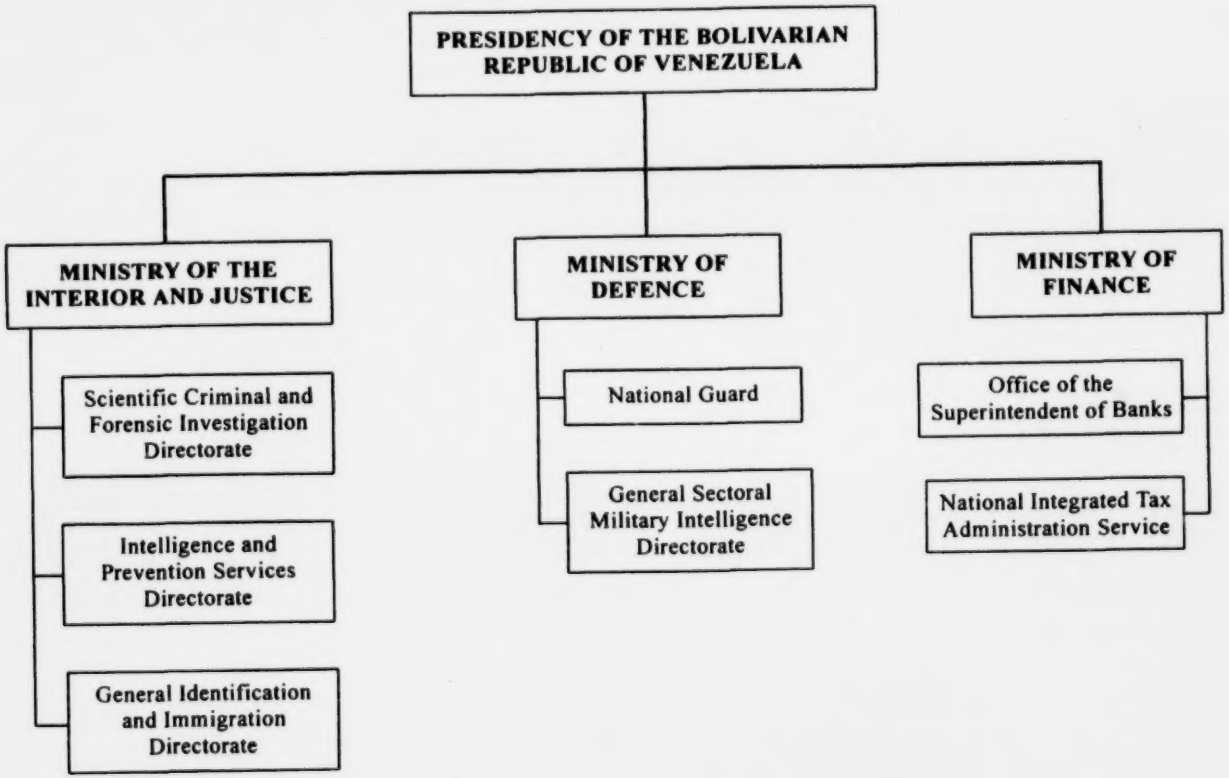
See the annex to this document.

(*Signed*) Alcides Rondón **Rivero**
Deputy Minister

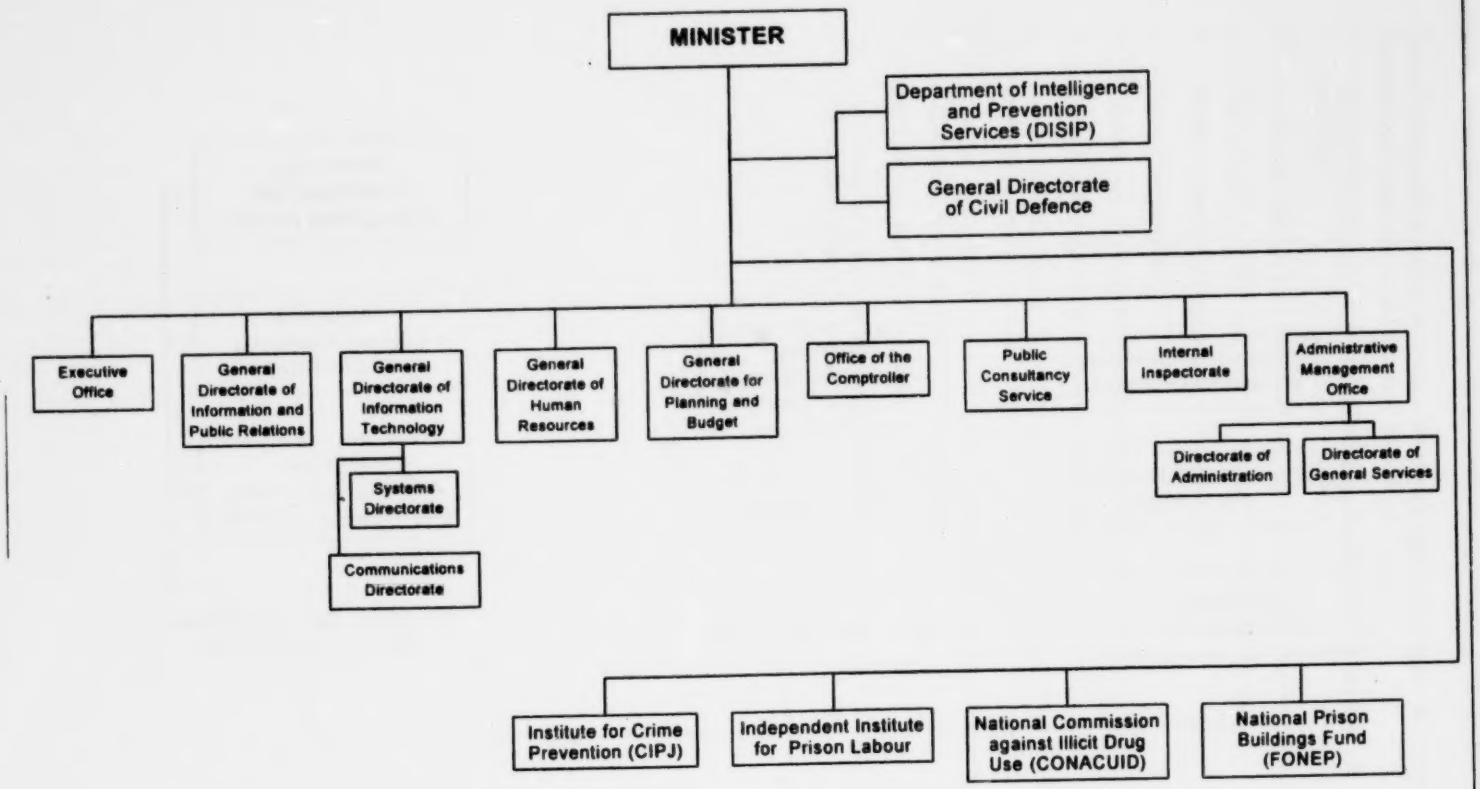
List of documents attached to the second report submitted by the Bolivarian Republic of Venezuela to the Counter-Terrorism Committee

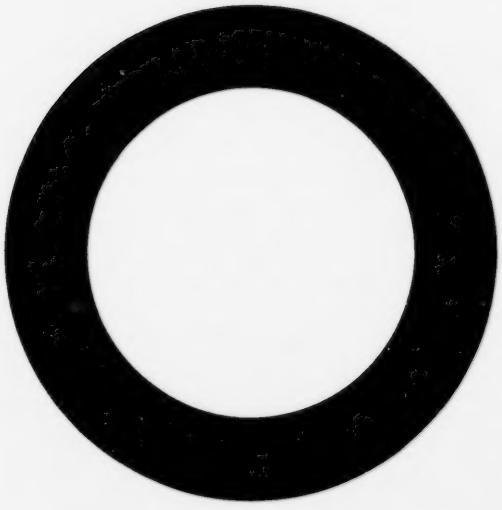
1. Organizational chart of government departments directly involved in counter-terrorism
2. Organizational chart of the Office of the Minister of the Interior and Justice
3. General Act on Banks and Other Financial Institutions
4. Organic Law on Refugees and Asylum Seekers
5. Penal Code (extract)
6. Constitution of the Bolivarian Republic of Venezuela (extract)
7. Organic Code of Criminal Procedure (extract)
8. Resolution No. 185-01 of the Office of the Superintendent of Banking and Other Financial Institutions
9. Circular No. SBIF-UNIF-DPC-0463 of the Office of the Superintendent of Banks and Other Financial Institutions
10. Draft special law on terrorist acts
11. Consolidated list of international instruments concerning terrorism to which Venezuela is a Party

Government departments directly involved in counter-terrorism


PRESIDENCY OF THE BOLIVARIAN REPUBLIC OF VENEZUELA
MINISTRY OF THE INTERIOR AND JUSTICE
Scientific Criminal and Forensic Investigation Directorate
Intelligence and Prevention Services Directorate
General Identification and Immigration Directorate
MINISTRY OF DEFENCE
National Guard
General Sectoral Military Intelligence Directorate
MINISTRY OF FINANCE
Office of the Superintendent of Banks
National Integrated Tax Administration Service

Organizational chart of the Office of the Minister of the Interior and Justice


MINISTER
Department of Intelligence and Prevention Services (DISIP)
General Directorate of Civil Defence
Executive Office
General Directorate of Information and Public Relations
General Directorate of Information Technology
General Directorate of Human Resources
General Directorate for Planning and Budget
Office of the Comptroller
Public Consultancy Service
Internal Inspectorate
Administrative Management Office
Directorate of Administration
Directorate of General Services
Systems Directorate
Communications Directorate
Institute for Crime Prevention (CIPJ)
Independent Institute for Prison Labour
National Commission against Illicit Drug Use (CONACUID)
National Prison Buildings Fund (FONEP)



United Nations S/2002/791

Security Council

Distr.: General
19 July 2002

Original: English

Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/387).

The Counter-Terrorism Committee has received the attached supplementary report from Norway, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-50426 (E) 120802

Annex

Letter dated 8 July 2002 from the Permanent Representative of Norway to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On instructions from my Government, I hereby have the honour of enclosing a second report from Norway to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001), with reference to your letter of 27 March 2002.

My Government stands ready to provide the Committee with further reports or information, if requested to do so by the Committee.

I should be grateful if you would have the text of this letter and its enclosure circulated as a document of the Security Council.

(*Signed*) Ole Peter **Kolby**
Ambassador
Permanent Representative

Enclosure

Second report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001*

NORWAY

Introduction

On 5 October 2001, Norway adopted a Provisional Ordinance with the necessary provisions for implementing Security Council resolution 1373. As of the date of adoption, Norwegian domestic law satisfied the requirements of resolution 1373. At the same time, Norway implemented the provisions of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999, which it signed on 1 October 2001. Norway will ratify the Convention in the near future and thereby join the group of states that have ratified all of the 12 international Conventions and Protocols relating to terrorism.

This second report to the CTC consists of two parts: Part A presents the new legislative measures taken by Norway to combat acts of terrorism and the financing of terrorism since the first report was submitted on 30 November 2001. Part B provides information on the points raised by the committee in its letter dated 27 March 2002.

A — New legislative measures adopted since the first report to the CTC

In order to replace the Provisional Ordinance and establish permanent legislation a bill was submitted amending a number of acts so as to establish effective legislative measures against acts of terrorism and the financing of terrorism. The parliament passed the bill on 17 June 2002 and royal assent was given on 28 June 2002. The amendments take effect immediately. An English translation of the amendments is enclosed (Annex I). Other Norwegian legislation has been reviewed to ensure that the requirements of resolution 1373 are fully met.

The new legislation makes it a serious criminal offence to commit or to directly or indirectly finance terrorist acts, and requires that the Norwegian authorities immediately freeze any assets or funds belonging to any person or entity suspected of such acts, as set out in resolution 1373. It also fulfils the relevant requirements of the 1999 Convention for the Suppression of the Financing of Terrorism. Some of these provisions are explained in further detail below.

The obligation to criminalise the financing of terrorism — sub-paragraph 1 (b)

This provision was originally implemented in sections 2 and 3 of the Provisional Ordinance, which has now been replaced by the new sections 147 a and b of the Penal Code.

Under Norwegian law a person who finances terrorist acts will in principle be considered to be an accomplice with regard to the terrorist act itself (the term "accomplice" is defined in the new section 147 a). According to the new section 147 a, such a person is liable to imprisonment for a term not exceeding 21 years. In those cases where section 147 a is not applicable, the new section 147 b overlaps and expands the criminal liability for funding terrorism.

Section 147 b, first paragraph, attaches criminal liability to those who obtain or collect funds or other financial assets in order that these financial assets should be used, in full or in part, to finance terrorist acts or any other contravention of the provisions of the new section 147 a.

* The annexes are on file with the Secretariat and are available for consultation.

The second paragraph in section 147 b attaches criminal liability to any person who makes funds or financial assets, or bank services or other financial services, available to

- a person or entity that commits or attempts to commit such criminal acts as mentioned in section 147 a,
- any entity owned by such a person as mentioned above over which he has control, or
- any person or entity that acts on behalf of or at the direction of such person or entity as mentioned above.

The penalty is imprisonment for a term not exceeding 10 years. Accomplices are liable to the same penalty.

The new sections of the Penal Code criminalizing terrorist acts and the financing of terrorism must be read in conjunction with existing provisions relating to corporate liability. When a person is liable for having committed an offence pursuant to a provision of the Penal Code, this liability may also be imposed on a legal person. The penalty is limited to fines. In cases related to the financing of terrorism in particular, corporate liability may be considered an alternative by the prosecuting authorities if an organization or financial institution is involved and it proves difficult to establish personal liability.

The obligation to freeze assets — sub-paragraph 1 (c)

This provision was originally implemented in the first paragraph of section 4 of the Provisional Ordinance, which has now been replaced by a new chapter, 15 b, of the Criminal Procedure Act. Section 202 d requires the authorities to freeze any property belonging to the suspect, any entity owned by the suspect or over which he has control, or any person or entity that acts on behalf of or at the direction of the suspect or such entity as is mentioned. Accordingly, when a person is suspected with just cause of preparing or carrying out an act of terrorism or of financing terrorism, the police authorities shall decide to freeze without undue delay any property belonging to the suspect or such persons or entities as are mentioned. Decisions to freeze property are taken by the chief or the deputy chief of the Police Security Service, or by a public prosecutor.

Freezing property means preventing anyone from having the property at their disposal, directly or indirectly, typically by blocking a bank account. The main purpose of freezing property is to prevent criminal offences. Temporarily freezing all the property of a person is a means of preventing him from using the funds to prepare or carry out terrorist acts.

If a financial institution suspects that a transaction is linked to terrorism, it shall of its own motion forward any information that may indicate such an offence to the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (ØKOKRIM). The financial institution is required, at the request of ØKOKRIM, to provide all necessary information concerning the possible offence. A customer or third party shall not be informed that such information as is mentioned has been forwarded.

In applying the national procedures for the freezing of assets in cases of terrorism, the need for close cooperation between experts in different fields is paramount. The specialised knowledge of lawyers, accountants, investigators and experts in communication technology working in various sectors of the civil service has been brought together to combat the financing of terrorism. To this end new patterns of police cooperation have been established between ØKOKRIM, the National Bureau of Crime Investigation (KRIPOS) and the Norwegian Police Security Service.

Obligation to prohibit the financing of terrorism — sub-paragraph 1 (d)

Sections 147 a and 147 b of the Penal Code both criminalise and prohibit the financing of terrorism. Jurisdiction over such acts extends to any persons and legal entities operating within Norwegian territory or any person or entity operating on behalf of or at the direction of such persons.

B — Information relating to the points raised by the CTC in letter dated 27 March 2002

- **Sub-paragraph 1 (a):**

Could Norway please provide the CTC with the guidelines which have been issued by the Banking, Insurance and Securities Commission to all banks and financial institutions on their duties concerning freezing of assets and reporting suspicious transactions to the National Authority for Investigation and Prosecution of Economic and Environmental Crime.

An English translation of the guidelines is enclosed (Annex II and III).

- **Sub-paragraph 1 (d):**

Please explain how the financial tracking system ensures that funds received by charitable and similar associations are not diverted from the associations' stated purposes to terrorist activities.

In the first report to the CTC the obligation of financial institutions to report transactions that are suspected of being linked to terrorist acts is outlined. This financial tracking system has now been reconfirmed in permanent legislation, and could prove effective in revealing the financing of terrorism through charitable and similar associations.

Reports have to be submitted on all funds channelled by charitable and similar organisations, stating how the funds have been used. Audited accounts must also be enclosed confirming that accounts have been kept for the funds in accordance with generally accepted accounting principles and that the funds have been used as stated in the application.

Norwegian legislation provides for certain control mechanisms to supervise charitable and similar associations. Supervision is currently exercised by county governors. In 2001 the parliament passed a bill increasing the authorities' capacity for thorough supervision. The new act established a supervisory body to monitor the associations and their use of funds.

Under the existing rules to counter money-laundering, financial institutions and non-financial institutions have a duty to inquire into and report suspicious transactions. This includes a duty to report funds received by charitable and similar associations where there is a suspicion that these funds might be forwarded for terrorist purposes. In these cases, transactions may not be carried out until the relevant police authorities (ØKOKRIM) have been informed. ØKOKRIM may order the institution not to carry out the transaction.

Financial institutions have a duty to establish adequate control routines for detecting and reporting suspicious transactions. Circulars provide information i.a. on persons and organisations on the UN sanctions committee's list. Currently there is no obligation for financial institutions to use an electronic tracking system, although several of the major financial institutions have implemented such systems. The supervisory authorities are considering this issue.

As regards Norwegian assistance to charitable organisations abroad, the most important channels for humanitarian assistance are the UN system and Norwegian NGOs. Funds are rarely transferred directly to local NGOs. Grant recipients must always comply with rigorous standards of accounting and auditing.

- **Sub-paragraph 2 (a):**

Please describe the mechanism under Norwegian law that prevents weapons from being supplied to terrorists within Norway.

In addition to the Norwegian Export Control Act, which requires a licence for all trade in weapons and military equipment, acquiring or possessing a firearm in Norway requires a permit from the police. Permits are only given when the firearm is to be used for recreational purposes and are only issued after police checks. All privately owned firearms are registered with the police. A central register of all privately owned firearms in Norway is scheduled to be established at the end of this year.

The owners of firearms are required to keep their weapons under lock and key. If a person has more than four firearms, or the firearms include revolvers, pistols or automatic weapons, all the weapons are to be kept in an approved secure gun locker.

If a weapon is lost or falls into wrong hands, this must be reported to the police. The police may also verify that weapons are being kept under secure conditions in private homes.

In addition to the registered weapons, there are also unregistered firearms in private hands, mainly left over from the Second World War. Norway intends to address this situation by declaring a national weapons amnesty, which is scheduled to take place in 2003.

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting of funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Norway, including in particular;

- the carrying out, within or from Norway, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and

- deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collecting of funds through front organisations.

Norwegian penal provisions, which attach criminal liability to acts committed to facilitate terrorist acts, indirectly prohibit recruitment to terrorist groups. Section 147 b directly targets the collecting of funds for terrorist activity. The Penal Code also contains a broad range of provisions that in other ways target participation in terrorist activity. Section 104 (a) of the Penal Code attaches criminal liability to any person who forms or takes part in a private organisation of a military character or who supports any such organisation, or who forms, takes part in or supports terrorist groups. If the organisation or group or its members control supplies of arms and explosives, the penalty is imprisonment for a term not exceeding six years. A similar but broader provision is to be found in section 330 of the Penal Code. The Penal Code also contains provisions that attach criminal liability to those who in various ways prepare a terrorist act or conspire for the purpose of committing a terrorist act, and the offenders may be punished even though the intended terrorist act has not actually taken place. Examples of such provisions are found in sections 94, 140, 159, 160, 161, 177 and 185 of the Penal Code.

Since the first report, several new steps have been taken to suppress recruitment to terrorist groups and the supply of weapons to terrorists. Section 104 (a) of the Penal Code has been expanded, and explicitly attaches criminal liability to persons who recruit members to terrorist groups. Section 161 of the Penal Code has also been expanded. It attaches criminal liability to any person who acquires, manufactures or stores firearms, explosives or special tools for manufacture or use with intent to commit a felony. The penalty is imprisonment for a term not exceeding six years.

Through its common position 931/2001/CFSP with subsequent amendments, the European Union has established a list of persons and organisations who are deemed to support acts of terrorism, as a supplement to the UN sanctions committee's list. Norway has aligned itself with this important European position and supports the measures it foresees.

- **Sub-paragraph 2 (c):**

According to the report, if a foreign national is suspected of or charged with carrying out or participating in a terrorist act, he or she may be refused entry. The report also explains that if a foreign national is rejected, expelled or refused a permit under the Immigration Act, such as a person is protected against being sent to any area where he or she may fear prosecution. Since sub-paragraph 2 (c) of the Resolution contains an obligation to deny safe haven to terrorists, please clarify how Norway complies with this sub-paragraph.

If a foreign national is rejected, expelled or refused a permit pursuant to the Immigration Act, he is protected against being sent to any area where he may fear persecution (not prosecution, as was stated by mistake in the previous report). This applies to all decisions made pursuant to the Act.

If a terrorist has applied for asylum, that person will not be given protection. It follows from the Act that protection does not apply when there are circumstances of the kind mentioned in Article 1 F of the Refugee Convention (the exclusion clauses). According to the article, the provisions of the convention shall not apply to any person with respect to whom there are serious reasons to presume that he or she has committed specified acts.

Since the Norwegian report was drawn up, the Immigration Act has been amended in several ways in order to better ensure that terrorists are denied any kind of safe haven in Norway. Sections 29, 30 and 58 have all been revised, and now explicitly say that a foreign national may be rejected or expelled if that person has contravened the provisions of section 147 a or b of the Penal Code, or has provided safe haven to any person who the foreign national knows has committed such an offence.

- **Sub-paragraph 2 (d):**

According to the report, "those who finance, plan, facilitate or commit terrorist acts from Norwegian territory may be extradited according to the Norwegian Extradition Act, provided the act in question is punishable by deprivation of liberty for a maximum period of more than one year. It may follow from international agreements that extradition may take place even if the condition has not been met." Please explain whether extradition can occur when the acts committed are punishable by deprivation of liberty for a maximum period of less than one year.

Extradition for acts punishable by deprivation of liberty for a maximum period of one year or less than one year can only occur when the request for extradition is covered by an international agreement under which Norway is obliged to extradite for such an offence. This limit is not an obstacle in cases where terrorist offences are involved, as such offences would carry higher maximum penalties.

According to a separate extradition act relating to extradition to Denmark, Iceland, Finland and Sweden, extradition may take place for offences that are punishable in the requesting state by a more severe penalty than fines.

- **Sub-paragraph 2 (e):**

According to the report, "in order to avoid the misconception that terrorist acts are mildly punished in Norway, it should be noted that Norwegian criminal law is in general characterised by moderate maximum penalties, in harmony with Nordic legal tradition. Unless otherwise expressly stated, imprisonment may be imposed for a term of from 14 days to 15 years (c.f. section 17 of the penal code). Imprisonment may never exceed 21 years, no matter how grave the felony". Is Norway considering revising its maximum penalties in view of sub-paragraph 2 (e) of the Resolution?

Pursuant to the new section 147 a of the Penal Code, which attaches criminal liability to any person who commits a terrorist act, such a person is liable to imprisonment for a term not exceeding 21 years. This is currently the maximum penalty in Norway.

Norway is, however, considering revising its maximum penalty. In a Green Paper presented by the government in June 2002, it is proposed to increase the maximum penalty from 21 years to 30 years of imprisonment. The proposal has recently been circulated for comment. It should also be noted that Norway has adopted a new form of detention as an alternative to ordinary imprisonment with effect from 1 January 2002. Such detention is not confined to a limited period of time, and may be imposed by the courts if a time-limited penalty such as regular imprisonment is not adequate in order to protect society from the perpetrator. It is a condition for imposing detention that the perpetrator has committed a serious crime, which has violated or endangered the life, health or freedom of others. In addition, the court must consider it likely that the offender would commit such a felony again if he were to be set free, or that he has previously committed or tried to commit a less serious felony and the risk of it happening again is very likely. In light of the strong intent to cause harm that characterises an act of terrorism, it is likely that Norwegian courts would exercise the power of detention in the event of criminal proceedings pursuant to section 147 a of the Penal Code.

- **Sub-paragraph 2 (g):**

Could Norway please provide the CTC with information on the mechanism for inter-agency co-operation between the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls preventing the movement of terrorists.

As a consequence of the Schengen cooperation, the management of border controls at the external borders has been strengthened and the internal border controls have been mainly abolished. Norway is responsible for managing external border controls on the Norwegian-Russian border. A number of practical measures involving the police, customs, Coast Guard and immigration authorities have been introduced to prevent transnational organised crime.

To secure the optimal use of available resources, a government coordination unit for combating organised crime was established in October 2000 comprising members from the Office of the Public Prosecutor, the National Police Directorate, ØKOKRIM, KRIPOS, the Norwegian Police Security Service, local police, the customs authorities and the immigration authorities. As a direct result of the enhanced cooperation that has been achieved, a number of grave felonies have been dealt with by the courts, organisers of criminal networks have been sentenced, considerable quantities of drugs, liquor and weapons have been seized, and large amounts of money have been frozen. In 2001 a project named "Catch" involving officers recruited from other specialised police units was organised in order to track down organisers of drug smuggling and money-laundering.

Legislative measures to suppress the financing of terrorist acts have been followed up by enhanced cooperation between various police units responsible for dealing with organised crime and intelligence analysis. Closer cooperation and regular sharing of information have proved invaluable, especially in monitoring dubious financial transactions.

- **Sub-paragraph 3 (c):**

Please provide the CTC with a list of the bilateral co-operation agreements concluded by Norway to prevent and suppress terrorist attacks and take action against perpetrators of such acts.

Based on the United Nations Security Council's call for increased international cooperation in order to combat terrorism, Norway and the Organisation of African Unity (OAU) have agreed on a cooperation programme for supporting the implementation of resolution 1373 in the OAU's member countries. Norway will make available

approximately USD 210 000 in 2002 for this project. Norway is also funding a project to support strengthened cooperation between the SADC countries on fighting terrorism.

Norway has concluded agreements with the European Union and the Nordic countries on police cooperation and mutual assistance in criminal matters. In addition, agreements on police cooperation and crime prevention have been concluded between Norway and Russia.

- **Sub-paragraph 3 (e):**

Have crimes specified in the relevant international conventions been included as extraditable offences in the bilateral treaties which Norway has concluded with other countries as provided for in a number of the relevant international conventions and protocols relating to terrorism?

According to Norwegian law, extradition may take place irrespective of the existence of a treaty. Offences that are punishable by a penalty of more than one year are extraditable. Extradition may be denied for offences of a political nature. Acts of terrorism are not, however, regarded as political offences under Norwegian law.

Norway concluded bilateral extradition treaties with the USA in 1977 and Australia in 1985. The treaty concluded with Australia does not contain a list of extraditable offences but establishes that offences that are punishable by a penalty of more than one year are extraditable.

The treaty concluded with the USA contains a list of 33 offences that are extraditable according to the treaty. Terrorist acts as such are not explicitly mentioned in the list, but it contains acts such as murder, manslaughter, malicious wounding or grievous bodily harm, kidnapping, abduction, damage to property and other acts that a terrorist attack could involve. The question of extending the list of extraditable offences in the bilateral treaty will be further evaluated.

- **Sub-paragraph 3 (g):**

Please explain whether Norway's reservation to the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, is considered to be in effect vis-à-vis the States Parties to this convention and whether it reflects Norway's practice with regard to other States.

Norway is fully committed to the work being done in the Council of Europe on preparing a programme of action against terrorism, and takes an active part in the multidisciplinary group that deals with the revision of the 1977 Convention.

Norway does not consider acts of terrorism to be political offences. The reservation to the 1977 Convention is therefore interpreted and applied by the Norwegian authorities in accordance with other international obligations not to consider acts of terrorism, as defined by international Conventions and Protocols relating to terrorism, as political offences. Norway is currently considering withdrawing the reservation.

- **Paragraph 4:**

Has Norway addressed any of the concerns expressed in paragraph 4 of the Resolution?

Norway is addressing the concerns expressed in paragraph 4 of the resolution in various international bodies that address police cooperation and crime prevention, including within the Schengen co-operation, with a view to strengthening regional cooperation against organised crime. For example, these concerns are on the agenda of the European Police Chiefs Task Force and the Baltic Sea Task Force.

Nationally, the relevant authorities and agencies have established close cooperation, and efforts have been initiated in both the public and the private sector to combat terrorist financing. Co-operation has also been established between the Norwegian Banking, Insurance and Securities Commission and diplomatic representatives in Oslo.

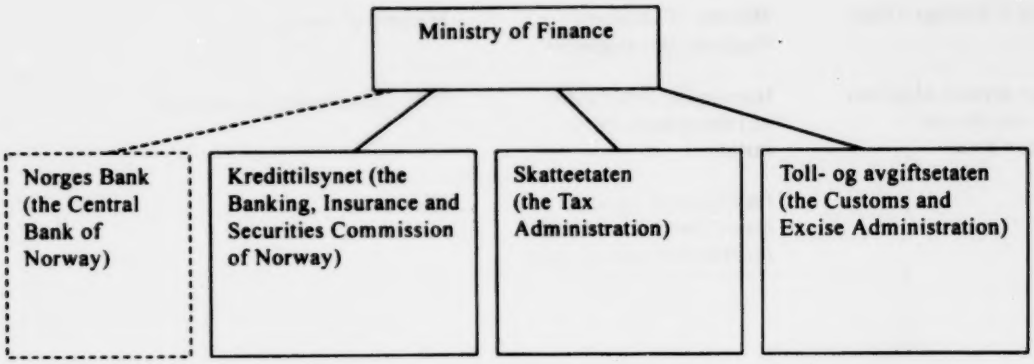
The first report to the CTC contains a reference to an ongoing criminal investigation relating to money transferred through the so-called "Hawala" system operating in Norway. In such informal systems, money can be forwarded in ways that make it difficult for the authorities to check on the final destination of the funds. In its guidelines for measures to suppress the financing of terrorism, the Financial Action Task Force (FATF) has warned that such informal systems may be used to forward money for terrorist purposes.

After eight months of investigation into the matter, several persons in Norway have been charged with money-laundering and contravention of the Financial Institutions Act and of regulations relating to book-keeping, accountancy, currency transfer and taxation.

- **Other matters:**

Could Norway please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

Cf. attached charts.


Ministry of Finance
Norges Bank (the Central Bank of Norway)
Kredittilsynet (the Banking, Insurance and Securities Commission of Norway)
Skatteetaten (the Tax Administration)
Toll- og avgiftsetaten (the Customs and Excise Administration)

Responsibilities relating to counter-terrorist measures:

The Central Bank of Norway
Deals with reporting of money transfers into and out of Norway.

The Banking, Insurance and Securities Commission of Norway
Supervision of financial institutions, including compliance with the rules for preventing money-laundering and terrorist financing through the financial system.

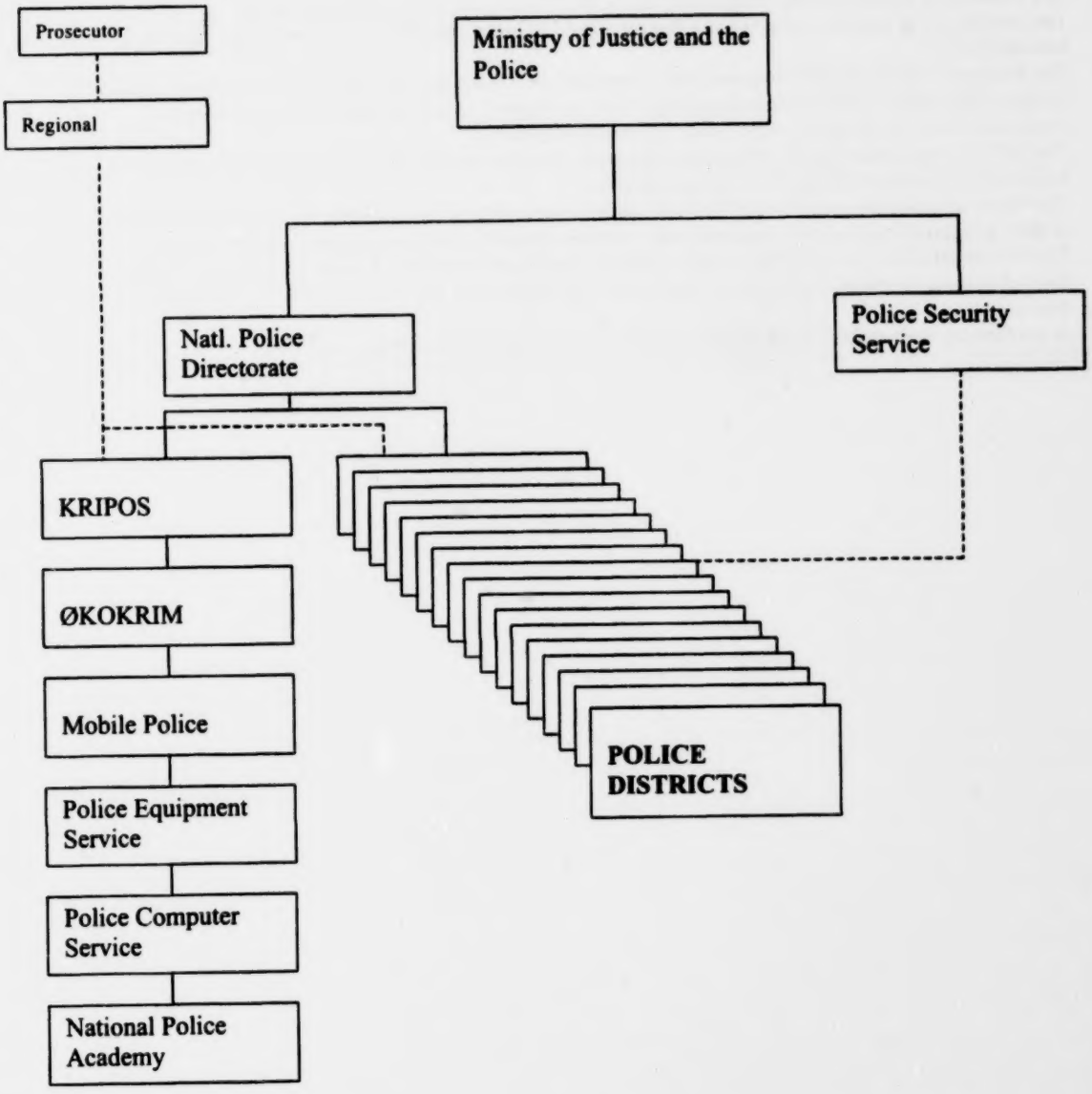
The taxation authorities
Tax control.

The Customs and Excise Administration
Border control.

The Immigration Administration

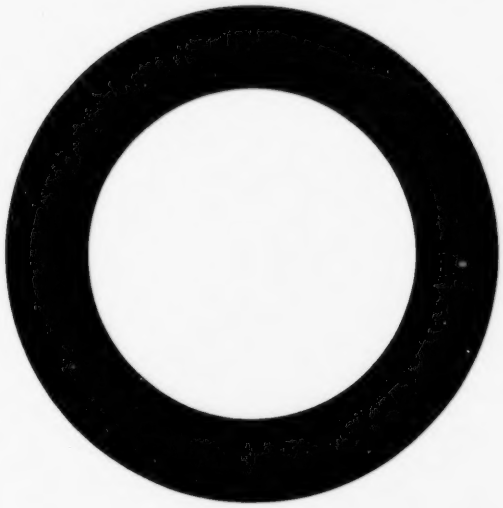
Ministry of Foreign Affairs	Ministry of Local and Regional Development	Ministry of Justice
Foreign Service Missions *Issue visas for the Schengen area*	Norwegian Directorate of Immigration (first instance)	Norwegian Police Directorate
	Immigration Appeals Board (second instance) *Independent appeals body*	The Police

The Norwegian Police Service



Explanatory notes

- The Norwegian Police Service is organized under the Ministry of Justice and the Police.
- Two police bodies reports to the MJ, the National Police Directorate (NPD) and the Police Security Service (PSS).
- The Prosecutor General (PG) is responsible for police activities related to investigation and prosecution of crime, the office of PG is a quasi judicial office, not subject to instructions from the Ministry of Justice but from the King in Council (full cabinet of ministers)
- The NPD is responsible for the general management of the police and for all activities that are not exclusively the responsibility of the PG or the PSS.
- The Police districts are geographical units of various sizes, they are responsible for all police activities in their geographical area, they may call upon various central organs in a support capacity like the KRIPOS or ØKOKRIM . The PSS is responsible for intelligence and international cooperation in the field of counter- terrorism and counter-espionage. Operational action will be handled by the police districts.
- In performing their duties the PSS will communicate directly with the police districts.



United Nations S/2002/792

Security Council

Distr.: General
19 July 2002

Original: English

Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/452).

The Counter-Terrorism Committee has received the attached supplementary report from South Africa, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-49667 (E) 010802

Annex

Note verbale dated 8 July 2002 from the Permanent Mission of South Africa to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of the Republic of South Africa to the United Nations presents his compliments to the Chairperson of the Counter-Terrorism Committee established pursuant to Security Council resolution 1373 (2001) and has the honour to respond to the points raised in the latter's letter dated 15 April 2002. The enclosure attached herewith constitutes the second report of the Government of South Africa on the steps taken to implement resolution 1373 (2001).

Enclosure

South Africa's reply to the letter dated 15 April 2002 received from the Chairperson of the Security Council's Counter-Terrorism Committee, Ambassador J. Greenstock, containing comments on South Africa's national report (S/2001/1281) submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

General Comment

There is currently no omnibus legislation that could be applied to countering all aspects of terrorism in South Africa. A comprehensive legislative framework is nevertheless in place that could be used to prevent and prosecute acts of terrorism. Some amendments have already been made to rectify deficiencies identified in the existing legislative framework, to make provision for the combating of terrorism. For example, amending the offences provided for in the Civil Aviation Offences Act (Act No. 70 of 1972) as set out in Section B paragraph 1.1.3 of South Africa's National Report pursuant to resolution 1373 (2001) (S/2001/1281).

In addition, it has been found that the current legislative framework does not cover relatively new concepts, such as the criminalising of assistance to terrorist groups. It is, however, envisaged that the primary means of overcoming shortcomings pertaining to terrorism in the legislative framework, will be addressed in the proposed Anti-Terrorism Bill. The nature and processes relating to the Anti-Terrorism Bill have been described in detail in the National Report (S/2001/1281) and are further elaborated on below, in response to the Committee's questions. The South African Law Commission has been at great pains to ensure that the Bill is drafted consistently with the provisions of the Bill of Rights enshrined in the South African Constitution. In addition there has been a wide consultative process and the Bill has drawn widely on international best practice.

Subparagraph 1 (a):

- The report indicates that provision is currently made by the Prevention of Organised Crime Act 1998 for monitoring suspicious financial transactions. How, in particular, does the Act relate to transactions in support of terrorism or criminal purposes generally, as compared with its application to the proceeds of crime? The report also indicates that extensive provision is to be made by the proposed Financial Intelligence Centre Act in relation to the vigilance (transaction-reporting) obligations of an extensive range financial intermediaries, including those outside the conventional financial sector (e.g. lawyers). How does the proposed Act, which seems to concentrate on criminal origins of funds and offences against revenue and foreign-exchange laws, deal with the prevention of economic and financial operations with terrorist or other criminal aims?

1. The provisions of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) and the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) have been developed to counter

money-laundering in its traditional sense and are not specifically designed to apply to terrorism or terrorist activities. These provisions will nevertheless be applicable to transactions involving funds or assets associated with terrorism or terrorist groups in certain circumstances.

2. In the case of the current reporting duty under the Prevention of Organised Crime Act the element of the proceeds of unlawful activities has to be present for a transaction to be reportable. This will include transactions involving funds or assets associated with terrorist groups if the activity from which the funds or assets have been derived constitutes an offence in the place where it was carried out. Accordingly, transactions involving funds or assets derived from crimes which are intended to finance future terrorist activities and funds or assets derived from terrorist activities which constitute offences, all fall within the scope of this reporting duty.

3. However, transactions, which are intended to finance terrorist activities, but which do not involve the proceeds of unlawful activities do not fall within the reporting duty of the Prevention of Organised Crime Act. The provisions on reporting on transactions in the Prevention of Organised Crime Act will be replaced by provisions creating a number of reporting duties in the Financial Intelligence Centre Act.

4. Proposals for legislative amendments to the reporting provisions of the Financial Intelligence Centre Act, (which will replace the relevant provisions of the Prevention of Organised Crime Act), to introduce a reporting duty concerning suspicions that transactions are being conducted to finance terrorism, are being considered for inclusion in the Anti-Terrorism Bill.

5. In the case of the Financial Intelligence Centre Act the same reasoning as set out in paragraph 3, will apply with regard to many suspicious or unusual transactions. There are furthermore a number of instances where the element of the proceeds of unlawful activities is not required to make a transaction reportable. These are transactions involving cash amounts exceeding the prescribed threshold, transactions that have no apparent business or lawful purpose, transactions that are aimed at avoiding another reporting duty and transactions aimed at evading tax. All transactions aimed at making funds or assets available to terrorist groups or facilitating future terrorist activities, which fall within one of these categories, will have to be reported under the provisions of the Financial Intelligence Centre Act.

6. The reporting of such transactions will, however, still be coincidental and will not occur because of the fact that the transactions are aimed at making funds or assets available to terrorist groups or facilitating future terrorist activities. Such a transaction which does not exceed the threshold for reporting cash transactions, does not involve the proceeds of unlawful activities, does not appear to be without an apparent business or lawful purpose and does not raise a suspicion that it is being conducted to avoid a reporting duty or to evade tax, will not fall within the reporting duties of the Financial Intelligence Centre Act.

7. The provisions of the Prevention of Organised Crime Act cannot be used to monitor transactions by a specific person or organisation. These provisions do furthermore not apply to transactions that do not involve a suspicion concerning the proceeds of unlawful activities. The provisions of

the Financial Intelligence Centre Act provide for the monitoring of transactions conducted by specific persons or organisations if there is a suspicion that they are involved in the laundering of proceeds of unlawful activities. The Financial Intelligence Centre Act, however, does not allow the monitoring of transactions conducted by specific persons or organisations on the basis that they may be suspected of involvement in terrorist activities.

8. It is intended that the introduction of a power to monitor transactions of persons on the basis of their suspected involvement in the financing of terrorism be considered together with the efforts to introduce a reporting duty concerning transactions suspected of being associated with the financing of terrorism.

9. It is envisaged that the Anti-Terrorism Bill will create a mechanism whereby applications for the monitoring of transactions conducted by persons or organisations on the basis that they are suspected of involvement in terrorist activities will be possible.

Monitoring and reporting of transactions in terms of Prevention of Organised Crime Act, 1998, and the Financial Intelligence Centre Act, 2001:

The Prevention of Organised Crime Act, 1998

10. The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998, "the Prevention of Organised Crime Act") in section 7, provides for a duty to report certain information. The reporting duty under the Prevention of Organised Crime Act applies to any person who carries on a business, or is in charge of, or employed by a business, or who manages a business. Reports in terms of these provisions are currently made to the Commercial Branch of the South African Police Detective Service.

11. The duty deals with three different scenarios where reporting must take place. The first is where property comes into the possession of the person or business concerned. In this case a suspicion that the property is the proceeds of unlawful activities must be reported.

12. The second is where a specific transaction involving the person or business concerned takes place. In this case the duty is to report a suspicion that the transaction will facilitate the transfer of the proceeds of unlawful activities.

13. The third is where a transaction that involves the person or business concerned has been discontinued. In this case a suspicion that the transaction, had it been concluded, may either have brought the proceeds of unlawful activities into the possession of the person or business, or have facilitated the transfer of those proceeds, must be reported.

14. The term "proceeds of unlawful activities" is defined in the Prevention of Organised Crime Act to include any property which was derived, received or retained in the Republic or elsewhere as a result of any unlawful activity. "Unlawful activity" is defined in the same Act to include any

conduct that constitutes a crime or contravenes a law whether it occurred in the Republic or elsewhere.

15. When all of this is read together it means that persons engaged in business have to report suspicions that they are dealing with property that was derived within South Africa or elsewhere from an offence that took place within South Africa or elsewhere.

The Financial Intelligence Centre Act, 2001

16. The Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001, "the Financial Intelligence Centre Act") contains a number of duties to report information. These include a duty under section 28 to report cash transactions exceeding a certain threshold, which is still to be determined, and a duty under section 29 to report so-called suspicious and unusual transactions. These provisions have not yet taken effect since the relevant authorities are in the process of developing the necessary infrastructure (such as the establishment of a Financial Intelligence Centre and the drafting of secondary legislation). It is foreseen that the duty to report suspicious and unusual transactions will take effect during the second half of 2002. Once it takes effect this duty will replace the current reporting duty under the Prevention of Organised Crime Act. The duty to report transactions exceeding a certain threshold will probably take effect during 2003.

Cash transactions

17. This duty will apply to so-called accountable institutions and reporting institutions. Accountable institutions are listed in Schedule 1 to the Financial Intelligence Centre Act and include all financial and investment service providers. Reporting institutions are listed in Schedule 2 to the Financial Intelligence Centre Act and include only dealers in motor vehicles and Kruger Rands.

18. This duty will arise when the institution concerned concludes a transaction with a client in terms of which an amount of cash exceeding the threshold is paid to the client or received from the client.

19. Cash, in this provision, means South African coin and paper money, coin and paper money of another country and travellers' cheques. The threshold will be prescribed by regulation.

Suspicious and unusual transactions

20. The duty under the Financial Intelligence Centre Act to report suspicious and unusual transactions will apply to the same category of persons as the current duty under the Prevention of Organised Crime Act. This is any person who carries on a business, or is in charge of, or employed by a business, or who manages a business. Reports made under the duty in the Financial Intelligence Centre Act will be made to the Financial Intelligence Centre, which is established by the same Act.

21. The duty under the Financial Intelligence Centre Act to report suspicious and unusual transactions will apply in the same three scenarios referred to above, but will also be somewhat wider. In addition the duty under the Financial Intelligence Centre Act will also deal with four other scenarios.

22. The first scenario is where there is a suspicion that a transaction or series of transactions to which the business is a party has no apparent business or lawful purpose. There can be numerous examples of such transactions but this will generally include transactions which appear unnecessarily complex compared to their apparent purpose, transactions which involve unusual amounts, given the client profile or transactions which do not seem to be aimed at achieving a profit or avoiding a loss.

23. The second is where there is a suspicion that a transaction or series of transactions to which the business is a party is conducted to avoid giving rise to any of the other reporting obligations under the Financial Intelligence Centre Act. An example of this may be that cash transactions are structured in order to remain below the amount that will trigger the cash threshold reporting duty.

24. The third is where there is a suspicion that a transaction, or series of transactions, to which the business is a party, is conducted to evade tax.

25. The fourth is where there is a suspicion that the business is used for money-laundering purposes.

Monitoring Orders

26. The Financial Intelligence Centre Act, in section 35, will provide for monitoring orders to be issued by a judge. These will be issued if there is reason to suspect that a person is using an institution or an account or facility at an institution for money-laundering purposes. In terms of a monitoring order the institution will have to report all transactions conducted by a specific person or all transactions involving a specific account or facility.

27. The term "money-laundering" in terms of the Financial Intelligence Centre Act refers to activities that have the effect of concealing the nature, source or movement of the proceeds of unlawful activities or any person's interest in such proceeds. The concepts of "proceeds of unlawful activities" and "unlawful activity" have the same meaning in the Financial Intelligence Centre Act as in the Prevention of Organised Crime Act.

- How do the Currency and Exchange Act and the Exchange Control Regulations contribute to the fight against terrorism financing (except as mentioned in the following dot-point item)? How does the Regulation of Foreign Military Assistance act, which seems to focus on conventional military formations, assist in the curbing of terrorist activities, in particular.

1. Certain banks were appointed as Authorised Dealers in foreign exchange. Their function is to assist the Exchange Control Department of the South African Reserve Bank in administering

exchange control. All applications to Exchange Control have to be made through an Authorised Dealer. The Exchange Control Rulings, issued by the Exchange Control Department of the South African Reserve Bank, set out the authorities granted to Authorised Dealers and the rules and procedures to be followed by the Authorised Dealers in dealing with day to day matters relating to exchange control. These are amended as required and supplemented by circulars. The Exchange Control Rulings are in fact, a technical handbook for use by the Authorised Dealers, containing authorities, instructions and conditions applicable to the wide range of transactions that they may undertake on behalf of their clients. It follows, therefore, that only transactions specifically approved by the Exchange Control Department or those specifically authorised in terms of the Exchange Control Rulings may be effected. It will be a contravention of the Exchange Control Regulations should any foreign currency acquired from an Authorised Dealer be used for any purpose other than for which it was acquired.

2. Whilst the Currency and Exchanges Act and the Exchange Control Regulations have not been designed to deal with the fight against terrorism, these provisions can and shall be applied to restrict the flow of funds from South Africa to contribute towards financing terrorism activities outside the Common Monetary Area.

3. The Regulation of Foreign Military Assistance Act, 1998 (Act No.15 of 1998) has a broad definition and curbs any assistance to any party in an armed conflict and therefore applies to terrorist groups. Section 3 of the Act (attached as Addendum B to Report S/2001/1281) prohibits the rendering of any unauthorised military assistance (which includes financial assistance) by any person in the Republic or elsewhere to any state or organ of state, group of persons or other entity or persons unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC), in consultation with the Minister of Defence. The NCACC is a ministerial, controlling committee that was established by an August 1995 Cabinet decision to oversee South Africa's conventional arms policies and related arms transactions, in consultation with the Minister of Defence.

4. The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable to conviction to a fine or to imprisonment or both.

5. Foreign military assistance is broadly defined and includes military or military related services and also attempts, encouragement, incitement or solicitation thereof. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

➢ The report states that the absence of an UN-endorsed list of persons with terrorist links makes practical implementation of paragraph 1 of the Resolution very difficult. Many countries establish such lists on a national basis, in many cases by adopting lists provided by other countries, often using their banking and foreign-exchange laws to support them. The CTC believes that such an approach is appropriate, as would be the adoption by a State of legislation that dealt with the matter generically. The CTC would therefore be grateful for an indication of the particular difficulty that South Africa faces in this regard. In this connection, the CTC believes that this approach would be available despite the reservations expressed below (sub-paragraph 1(c)) on the scope of the regulation-making power under the Currency and Exchange Act 1933.

1. The difficulty that South Africa faces with regard to the practical implementation of paragraph 1 of resolution 1373 (2001), is to identify or target, in terms of the resolution, those "persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and entities acting on behalf of or at the direction of such persons", against whom action should be taken. The relevant South African authorities have taken action to prevent and suppress the financing of terrorist acts by alerting the South African financial sector of lists containing the names of identified terrorists and terrorist organisations/entities obtained from the UN Security Council Sanctions Committee on Afghanistan, and at a bilateral level. It is, however, not clear whether these lists would suffice for the identification or targeting of terrorists and terrorist organisations/entities for purposes of implementing paragraph 1 of resolution 1373 (2001) comprehensively.

2. It would assist member states in their efforts to implement resolution 1373 (2001) fully, if the Security Council could develop and/or endorse lists of terrorists and terrorist organisations/entities in terms of resolution 1373 (2001) specifically.

➢ Please provide a progress report on the passage and implementation of the Financial Intelligence Centre Bill and, in particular, any amendment of it to make it more specifically relevant to the fight against terrorism.

1. The Financial Intelligence Centre Act was adopted by the South African Parliament on 6 November 2001 and was assented to by the President on 28 November 2001. Certain provisions, including those establishing the Financial Intelligence Centre, took effect on 31 January 2002. A process is currently underway to develop the Financial Intelligence Centre and to draft regulations that will support the operation of the other provisions of this Act. It is envisaged that the majority of these provisions, which include provisions concerning the reporting of suspicious and unusual transactions, will take effect during the second half of this year.

Subparagraph 1 (b):

➢ Please provide a report on progress with the passage and implementation of the Anti-Terrorism Bill currently before the South African Parliament.

1. The Anti-Terrorism Bill is not currently before the South African Parliament.

2. The South African Law Commission (the Commission) is presently engaged in finalising its report on the Anti-Terrorism Bill. The Commission appreciates the international expectations and demands that its domestic legislation will and must comply with the requirements posed by the international conventions for combating terrorism and particularly the Convention on the Suppression of the Financing of Terrorism. The Commission is, therefore, committed to finalising this investigation as soon as possible. The working methods of the Commission entail that its project committee has to approve a draft report before it is submitted to the Commission for its approval. The Commission's working methods also entail that comparative studies are carried out in order to enable the Commission to benefit from experiences elsewhere in the world. In the context of terrorism this means a study of a host of very recent legislative measures emanating from the USA, Canada, the UK and Australia. In finalising the Commission's report on terrorism, these legislative measures, the Commission's preliminary proposals and the comments received on them, are subjected to a thorough evaluation and analysis in order to draft final recommendations and a final Bill.

3. The Commission's project committee on security legislation considered a draft report on 27 April 2002. The committee met again on 18 May 2002 and decided to finalise its deliberations on the draft report by 14 June 2002. Once the project committee has considered, deliberated on and approved the draft report, it will be submitted to the full Commission for its consideration. It is envisaged that this meeting will take place during August 2002. As soon as amendments resulting from this meeting are effected, the report and final Bill will be submitted to the Minister of Justice and Constitutional Development. The latter will then submit the report to the Minister of Safety and Security who will be responsible for promoting the Bill. It is envisaged that Cabinet approval for the introduction of the proposed legislation will be obtained during the third quarter of 2002. The Bill will thereafter be considered by Parliament.

Subparagraph 1 (c):

> ➢ South Africa's procedures for the freezing and provisional seizure of criminal funds and assets seem to be confined to those provided for under the Currency and Exchange Act 1933. Does the regulation-making power in that Act support the freezing of the whole range of assets contemplated by sub-paragraph 1(c) in relation to the suspected commission of offences relating to terrorism and its financing. It is important to distinguish between seizures occurring in the course of investigations and confiscations ordered upon sentencing. Does any legislation currently under consideration address this issue?

1. It is envisaged that mechanisms will be created by the Anti-Terrorism Bill to deal with the seizure and forfeiture of property suspected of being involved in terrorist activities.

2. The Prevention of Organised Crime Act provides for two types of orders. The first type is aimed at the so-called freezing of property. The second type is aimed at the confiscation of an amount of money or the forfeiture of property to the State. Property, by definition in the Act, includes money.

Freezing of property

3. The orders aimed at the freezing of property for which the Act provides are restraint orders and preservation of property orders. The purpose of a restraint order as well as a preservation of property order is to obtain temporary control over property (i.e. "freezing" the property) pending the finalisation of further proceedings for the final confiscation of money or forfeiture of property.

4. A restraint order can be applied for when a person is to be charged with an offence or when a prosecution for an offence has been instituted against a person. The Court may grant a restraint order if it appears likely that a trial court will, subsequent to a conviction, find that a person has benefited from criminal activity and make a confiscation order against that person. The restraint order will apply to the property of the person whose benefit from criminal activity will be considered, as well as the property of persons to whom he or she has made certain gifts.

5. A preservation of property order can be obtained in respect of any property that was concerned in the commission of an offence referred to in Schedule 1 to the Act and to the proceeds of any unlawful activity. It is not a requirement for the granting of a preservation of property order that criminal proceedings have been instituted, or are even envisaged, against any person.

6. To summarise, orders for the "freezing" of property in terms of the Act can be obtained, on the one hand, if the property concerned belongs to a person who has probably benefited from criminal activity in respect of which criminal charges are envisaged or have been

instituted or, on the other hand, if the property itself was concerned in the commission of certain offences or is the proceeds of unlawful activity.

Forfeiture of property

7. The orders aimed at permanently dispossessing a person of money or assets for which the Act provides are confiscation orders and forfeiture orders.

8. A confiscation order may be made after a conviction and subsequent to an enquiry into the value of the benefit that a person has derived from the relevant offence. The order is an order for the payment of an amount of money equal to the value, which the court places on the person's benefit. The order may be executed by the realisation of the property (i.e. converting the property into money) over which a restraint order was obtained.

9. A forfeiture order may be made if a preservation of property order is in force in respect of certain property and the court finds that the property was probably concerned in the commission of a certain offence or that it is the proceeds of any unlawful activity. In the case of a forfeiture order the specific property that is linked to the relevant offence or unlawful activity is forfeited to the State.

International co-operation

10. The International Co-operation in Criminal Matters Act, 1996, (Act No. 75 1996) of provides that orders for the freezing and forfeiture of assets granted by foreign courts may be sent to the Director-General of the Department of Justice and Constitutional Development with a request for assistance in executing those orders. Such an order may subsequently be registered with the appropriate court in South Africa upon which it will have the effect of an order of that court. The order can then be executed as if it was granted in South Africa in terms of the relevant provisions of the Act.

11. If the authorities in a foreign jurisdiction are unable to obtain an order in their courts which can be executed in South Africa, they will have to place the South African authorities in possession of sufficient information to prove the facts referred to in the paragraphs above, upon which a South African court may be convinced to grant an order.

Applicability to specific individuals

12. The Act was not developed with combating terrorism in mind. The provisions of the Act can therefore not be applied to property merely because the property belongs to a certain person or organisation, without proof of that person's or organisation's involvement in unlawful activity. These provisions can also not be applied to property, which may in future be used to facilitate certain activities or be placed at the disposal of certain persons or organisations.

13. It is envisaged that mechanisms will be created by the Anti-Terrorism Bill to deal with the seizure and forfeiture of property suspected of being involved in terrorist activities.

14. The provisions of the Act are aimed at removing the profit from criminal activity and discouraging persons to use their property, or allow their property to be used, for the commission of crime. A link with unlawful activity must therefore always be present for the provisions of the Act to be applicable. This link can be either between the person to whom the property belongs and an unlawful activity or between the relevant property itself and an unlawful activity. "Unlawful activity" as defined in the Act is a wide concept and includes any conduct, which constitutes a crime whether the conduct occurred in South Africa or elsewhere.

➢ Does any of the legislation currently under consideration address this question?

1. The Prevention of Organised Crime Act adequately addresses the freezing and forfeiture of the proceeds and instrumentalities of unlawful activities in South Africa. The Financial Intelligence Centre Act does not contain any provisions for the freezing and forfeiture of assets, except for a limited power to seize and forfeit cash which a person attempts to transport into or out of the Republic without reporting this in terms of the Act.

2. Consideration is being given to the inclusion of provisions dealing with the freezing and forfeiture of assets associated with the financing of terrorism in the Anti-Terrorism Bill.

Subparagraph 1 (d):

➢ What preventive controls and surveillance measures has South Africa put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organisations?

1. Currently any information received from any police service/force or intelligence agency is dealt with on an ad hoc basis. Any suspicious transaction is reported either by the South African Reserve Bank or a force/service/agency to Crime Intelligence for further investigation. Crime Intelligence also requests additional information from the South African Reserve Bank in order to conduct a more detailed investigation. In terms of the Prevention of Organised Crime Act, 1996 (Act No. 121 of 1996), all suspicious transactions are currently reported to the Commercial Crime Branch of the South African Police Service who also informs Crime Intelligence for in depth investigation (profiling). Once the Financial Intelligence Centre is established, suspicious transactions will be reported to the Centre.

2. Money (in cash) that enters South Africa is controlled by Customs and Excise, if this occurs through a legal border post. Detected border post facilities have been upgraded since 11 September 2001.

3. South Africa is of the view that better international co-operation needs to be established as it is difficult to determine whether organisations are charitable, religious or cultural when money is transferred from South Africa abroad and whether those organisations support terrorism. The further transfer of money equally poses a problem.

4. The South African intelligence community is, however, exploring avenues to determine this. Should organisations be identified as having ties with terrorism, those organisations will be put under surveillance and investigated. In South Africa, the necessary steps can be taken to investigate the organisations, should they have been identified as organisations with ties to terrorism.

➢ Does South Africa have any provisions for regulating alternative money transfer agencies (such as hawala')?

1. South Africa does not have provisions for specifically regulating *hawala* money-transfer agencies. However, South Africa, under the leadership of the Minister of Finance, Mr Trevor Manuel, forms part of an international working group investigating ways to counter funding for terrorism groupings, which include the *hawala* system.

2. In terms of present local legislation to counter illegal money transfers such as *hawala*, section 29 (1) and (2) of the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001) makes provision for suspicious and unusual transactions.

Subparagraph 2 (a):

➢ How may the criminal legislation mentioned be applied to acts carried out in preparation for terrorist acts?

1. South African law does not provide for a crime of "preparation". It is therefore important to understand the context in which this question is being asked, as the question will need to be interpreted within the provisions and terminology used in the South African legal lexicon and legislative framework.

2. At present it is not clear in which context the report was supposed to address the issue of preparation for terrorist acts. In relation to sub-paragraph 2(a), which deals with a prohibition to provide support to terrorist organisations, preparation is not referred to at all.

3. At this stage it can be indicated that South African law does provide for prosecution for the ancillary crimes such as attempt, conspiracy and incitement. This is provided for the in the Riotous Assembly Act, 1956 (Act No. 17 of 1956).

Section 18 (1) of this Act states that:

"18 (1) Any person who attempts to commit any offence against a statute or a statutory regulation shall be guilty of an offence and, if no punishment is expressly provided thereby for such an attempt, be liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable".

Conspiracy, which is a preparation act, is dealt with in section 18 (2) of the same Act that states:

"Any person who –

(a) Conspires with any other person to aid or procures the commission of or to commit, or
(b) Incites, instigates, commands, or pressures any other person to commit

any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable".

4. Similarly the Internal Security Act, 1982 (Act No. 74 of 1982) provides that:

"Any person who with intent to –

(a) overthrow or endanger the State authority in the Republic;

(b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic; or

(c) induce the Government of the Republic to do so or to abstain from doing any act or to adopt or to abandon a particular standpoint.

In the Republic or elsewhere –

i. commits an act of violence or threatens or attempts to do so;

ii. performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;

iii. conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i), or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or

iv. incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason".

5. It can also be noted that the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998) also covers any attempts to render military services or military-related services. In this regard the CTC is referred to the definition as spelled out in greater detail in the section dealing with terrorism financing on page 7 of this report.

➢ Could South Africa please provide a progress report on the legislative initiatives in the area of counter-terrorism announced for 2002.

1. The South African Police Service has drafted an Explosives Bill, which will be introduced to Cabinet soon. The Bill endeavours to follow the international trend in classification of explosives as well as international obligations with regard to control of explosives. The requirements in the International Conventions on the Marking of Plastic Explosives as well as the International Convention on the Suppression of Terrorist Bombings were taken into consideration when drafting the Bill.

2. Subject to finalisation, approval and enactment of the Anti-Terrorism Bill, it is envisaged that this Bill will provide for specific offences in respect of murder, kidnapping or other attacks upon the person or liberty of an internationally protected person, hostage taking, unlawful possession of nuclear material, acts against international maritime navigation, acts against fixed platforms located on the continental shelf, and the seizure and forfeiture of property suspected of being involved in terrorist activities. By creating these offences in South African domestic law, the way will be paved for South Africa to ratify the Conventions and Protocols it still needs to ratify:

   - The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons;
   - The International Convention Against the Taking of Hostages;
   - The Convention on the Physical Protection of Nuclear Material;
   - The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation;
   - The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf;
   - The International Convention for the Suppression of Terrorist Bombings; and
   - The International Convention for the Suppression of the Financing of Terrorism.

➢ How does South Africa control the establishment in its territory of para-military groups that have the potential to engage in terrorist activities? What measures have been implemented to prevent the possible establishment of such groups in its territory?

1. South Africa controls the establishment in its territory of para-military groups through the Second Criminal Law Amendment Act, 1992 (Act No. 126 of 1992) and the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998).

2. Section 13 of the Second Criminal Law Amendment Act prohibits the organising, training, equipping or arming of any organisation if the purpose of that organisation is to usurp some or all of the functions of either the South African Police Service or the South African National Defence force. Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years.

3. The CTC's attention is also drawn to the provisions of the Regulation of Foreign Military Assistance Act, 1998, appended as Addendum B to the National Report (S/2001/1281) and explained in detail in the National Report, as well in page 7 of this report.

➢ Please describe the measures, which prevent terrorists obtaining weapons within or outside South Africa's territory, in particular small arms or light weapons? Please outline the legislation concerning the acquisition and possession of such weapons? Please also outline the National arms Control Bill mentioned in the report and provide a progress report on its passage and implementation.

1. The possession of firearms in South Africa is strictly regulated by the Firearms Control Act, 2000 (Act No. 60 of 2000) which makes provision for a license to possess a firearm and criminalises the possession of firearms without the license.

2. In terms of this act:

   (a) A competence certificate must be obtained by a person, 21 years or older, before he/she can apply for a license to possess a firearm. This certificate is only issued after the individual applying has been scrutinized, especially his background information with regard to a tendency for violence (Section 9).

   (b) The person's competence certificate must be renewed every five years in terms of Section 10.

   (c) A separate license must be obtained for each firearm (Section 11).

   (d) For self-defence, only one firearm may be obtained and only certain firearms may be obtained for self-defence (Section 13).

   (e) Dealers, collectors and hunters are also scrutinised and have to be licensed.

3. Contraventions of this act are dealt with severely and sentences are as follows:

   (a) Less serious offences – sentences range from 2 years imprisonment to 15 years.

   (b) For manufacturing, importing, exporting and trading in unlicensed firearms and if a person is not licensed to manufacture or trade in ammunition, 25 years imprisonment.

4. Furthermore, a person can be declared unfit to possess a firearm when found guilty of high treason, sedition, malicious damage to property and other crimes where violence is an element.

5. The South African Police Service is currently following the constitutional route to have:

   - The Protocol on the Control of Firearms, Ammunition and other related Materials in the Southern African Development Community (SADC) region, ratified.

   - The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention against Trans National Organised Crime, signed.

6. The Committee's attention is drawn to the National Report (S/2001/1281) which deals comprehensively with legislation relating to weapons, including the Regulation of Foreign Military Assistance Act (Addendum B), the Armaments Development and Production Act (Addendum K), the Arms and Ammunitions Act (Addendum L) and the National Conventional Arms Control Bill.

7. As far as progress on the National Conventional Arms Control Bill is concerned, the Bill is currently under consideration in the National Assembly.

Subparagraph 2 (b):

> ➢ Please outline the measures, both legislative and practical, preventing entities and individuals, from recruiting, collecting funds or soliciting other forms of support for terrorist activities be carried out inside or outside South Africa, including in particular:
>
> - The carrying out, within or from South Africa, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and
>
> - Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organisations.

1. In terms of the Regulation of Foreign Military Assistance Act, rendering military assistance to a party to an armed conflict is prohibited. The definition of "military assistance" in the Act includes

financial support and personnel recruitment. The Act also specifies that no person "within the Republic or elsewhere" may render such foreign military assistance.

2. The National Conventional Arms Control Bill will seek to regulate the trade in conventional arms, by stipulating that no person may engage in such trade unless registered with the secretariat of the National Conventional Arms Control Committee and is authorised by a permit to do so. The term "conventional arms" includes brokering and services. Both the terms "brokering" and "services" are further defined, whereby the latter includes actions such as aid, advice, assistance, training, product support and brokering services.

Subparagraph 2 (e):

> Are the relevant provisions of the laws of South Africa applicable in all of the following circumstances:
>
> - Acts committed outside South Africa by a person who is a citizen of, or habitually resident in South Africa (whether that person is currently present in South Africa or not);
> - Acts committed outside South Africa by a foreign national who is currently in South Africa?

1. It is envisaged that the Anti-Terrorism Bill will contain a provision setting out the jurisdiction of South African courts in respect of terrorist acts which occur and acts performed in preparation of terrorism, not only inside but also outside the Republic. The following provision was contained in the Bill which formed part of the discussion paper and which set out the preliminary proposals on the jurisdiction of South African courts in respect of terrorism:

"15. The Courts of the Republic shall have jurisdiction in respect of any offence referred to in this Act, if –

(a) the perpetrator of the act is arrested in the territory of the Republic, in its territorial waters or on board a ship flying the flag of the Republic or an aircraft registered in the Republic; and

(b) the act has been or is committed –

(i) in the territory of the Republic and the perpetrator of the act is arrested in the territory of the Republic, or committed elsewhere, if the act is punishable in terms of the domestic laws of the Republic or in terms of the obligations of the Republic under international law;

(ii) on board a vessel or a ship or fixed platform flying the flag of the Republic or an aircraft which is registered under the laws of the Republic at the time the offence is committed;

(iii) by a national or group of nationals of the Republic;
(iv) against a national of the Republic;
(v) against the Republic or a government facility of the Republic abroad, including an embassy or other diplomatic or consular premises, or any other property of the Republic;
(vi) by a stateless person or refugee who has his or her habitual residence in the territory of the Republic;
(vii) on board an aircraft which is operated by any carrier registered in the Republic; or
(viii) against the security of the Republic".

2. As a general principle South African law does not establish extra-territorial jurisdiction. However, extra-territorial jurisdiction is provided for in specific legislation, which would apply to South African nationals outside South African territory or foreign nationals currently in South Africa. Legislation, which provides for extra-territorial jurisdiction relevant to the combating of terrorist acts, includes:

- The Regulation of Foreign Military Assistance Act, 1998, which provides that no person may "within the Republic or elsewhere" render foreign military assistance.

- The Civil Aviation Offences Act, 1972, (Act No.10 of 1972) which provides in section 3 that South African courts shall have jurisdiction over crimes committed on board South African aircraft anywhere in the world. In addition the courts will have jurisdiction over crimes committed on board any other aircraft if the aircraft lands in South Africa and the perpetrator is still on board or if the lessee of an aircraft has his principle place of business in the Republic or if the perpetrator is present in the Republic.

- The Prevention of Organised Crime Act, 1998 which provides in section 2 for the jurisdiction of the courts over a person who "within the Republic or elsewhere" commits an offence relating to racketeering activities (which is defined as the planned, ongoing, continuous or repeated involvement in any [serious] offence listed in the schedule to the Act.

- The Internal Security Act, 1982 which provides in section 54 for jurisdiction of the Courts over a person "... in the Republic or elsewhere ..." who committed an act of terrorism against the constitutional sovereignty of the Republic.

Subparagraph 2 (f):

> ➢ Please list the countries with which South Africa has concluded relevant bilateral agreements.

Police Co-Operation Agreements

1. The South African Police Service co-operates internationally in respect of the exchange of criminal information and police co-operation, including the use of Interpol channels. The South African Police Service has concluded police co-operation agreements, which without mentioning terrorism specifically, can be used to obtain co-operation in terrorism investigations.

2. One example in this regard is the Southern African Regional Police Chiefs Co-operation Agreement in respect of Co-operation and Mutual Assistance in the Field of Crime Combating concluded on 1 October 1997 between 12 Southern African States, namely; Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. This agreement provides for cross-border investigations, operations in general and undercover operations. It could also be used for counter-terrorism investigations/operations.
3. Police co-operation agreements have been concluded with:

▪ Brazil	Signed on 26 November 1996
▪ Argentina	Signed on 23 July 1998
▪ Chile	Signed on 12 November 1998
▪ The Russian Federation	Signed on 12 March 1998
▪ France	Signed on 26 June 1998
▪ Hungary	Signed on 3 May 1999
▪ China	Signed on 25 April 2000
▪ Egypt	Signed on 20 July 2000
▪ Nigeria	Signed on 14 March 2001
▪ Portugal	Signed on 22 April 2002

4. Draft agreements with the following countries are still under consideration:

- Bolivia
- Cape Verde
- Colombia
- Croatia
- Cyprus
- Iran
- Malta
- Mexico
- Peru
- Poland
- Russian Federation

- Spain
- Taiwan, Province of China
- Turkey
- Ukraine
- United Arab Emirates
- Venezuela

5. In the case of Taiwan, Province of China, a Memorandum of Understanding (MOU) between the respective liaison offices is under consideration. A draft MOU with Iran on combating illicit drug trafficking is in the process of being finalised.

Mutual legal Assistance Agreements

- 1999/09/16
  USA
  Treaty on Mutual Legal Assistance in Criminal Matters
  Entered into force on 25 June 2001.

- 1999/11/12
  Canada
  Treaty on Mutual Legal Assistance in Criminal Matters
  Entered into force on 5 May 2001.

- 2001/04/19
  Lesotho
  Treaty on Mutual Legal Assistance in Criminal Matters.

- 2001/05/31
  France
  Agreement on Mutual Legal Assistance in Criminal Matters.

Mutual Legal Assistance Agreements negotiated but not yet signed

- Brazil
- Hong Kong
- Namibia
- Zambia

Subparagraph 2 (g):

> ➢ What are the new measures that the South African Government plans to take during 2002 to control immigration in its territory and, in particular, to control the issuance of documents to foreign residents?

1. Measures have always been in place to control the movement of people on South Africa's territory. The Migration component of the Department of Home Affairs is responsible for the admission of persons to, their residence in and their departure from, the Republic of South Africa. The entry into and departure from the country through designated ports of entry are regulated by the provisions of the Aliens Control Act, 1991 (Act No 96 of 1991) (Attached as Addendum G to the National Report) (S/2001/1281).

2. No alien may enter or sojourn in the Republic unless he/she is in possession of an immigration permit to settle permanently in the Republic of South Africa, a visa or a temporary residence permit, all issued in terms of the Aliens Control Act.

3. The issuing and control of the said permits and visas is executed with the assistance of the computerised Movement Control System and the computerised Visa System. The Department of Home Affairs has a computerised visa and entry stop-list to prevent the entry into the South Africa of prohibited persons. All applications made abroad are checked against this stop-list. All ports of entry have access to the visa and entry stop-list, as well as the Movement Control System and the Visa System.

4. The visa and entry stop-list is checked in respect of every alien who enters South Africa whether he/she is in possession of a visa, a temporary residence permit or an immigration permit. The visa and entry stop-list as well as the Movement Control System are again consulted when applications for extensions of temporary residence permits are considered.

5. Strict procedures are in place to ensure that documents are issued only to persons legally entitled thereto. Such procedures include profiling of applicants, checking of sponsors and police clearances.

Subparagraph 3 (c):

> ➢ The CTC notes that, under South African law, extradition is not dependent on treaties, but that South Africa has concluded 13 extradition agreements with other states. Which are those States and what are the matters dealt with in those agreements?

Extradition Agreements

- 1873/12/03
  Austria
  Extradition Treaty

- 1873/12/03
  Hungary
  Extradition Treaty

- 1876/08/14
  France
  Extradition Treaty

- 1878/06/04
  Spain
  Mutual Surrender of Fugitive Criminals (Extradition)

- 1880/11/24
  Luxembourg
  Mutual Surrender of Fugitive Criminals (Extradition)

- 1880/11/26
  Switzerland
  Mutual Surrender of Fugitive Criminals (Extradition)

- 1889/02/19
  Spain
  Amending Treaty on 1878/06/04 for Extradition of Fugitive Criminals

- 1889/05/22
  Argentina
  Mutual Extradition of Fugitive Criminals

- 1892/10/17
  Portugal
  Mutual surrender of Fugitive Criminals (Extradition)

- 1896/02/13
  France
  Amending Art VII and IX of Extradition Treaty of 18760814

- 1898/09/26
  Netherlands
  Mutual surrender of Fugitive criminals (Extradition)

- 1901/06/26
  Austria & Hungary
  Amending Art XI of treaty of 18731203 - extradition of fugitive criminals

- 1901/10/29
  Belgium
  Mutual surrender of Fugitive Criminals (Extradition)

- 1904/06/29
  Switzerland
  Supplementing Art XVII of Treaty of Extradition 1880/11/26

- 1907/03/05
  Belgium
  Supplementing Art XIV of treaty of extradition of 1901/10/29

- 1908/09/12
  Paraguay
  Mutual surrender of fugitive criminals (Extradition)

- 1908/10/17
  France
  Modifying Art II of Extradition Treaty 1876/08/14

- 1909/07/29
  France
  Applying to Tunis the supplementary extradition convention of 1908/10/17

- 1910/09/24
  Greece
  Mutual surrender of fugitive criminals (Extradition)

- 1911/03/03
  Belgium
  Amending Article VI of Extradition Treaty of 1901/10/29

- 1923/08/08
  Belgium
  Extradition conventions of 1901/10/29, 1907/03/05, 1911/11/03 extended to Congo and certain British protectorates

- 1924/11/11 1926/06/04
  Czechoslovakia (Czech Republic and Slovak Republic)
  Extradition of criminals

- 1927/07/11 1927/07/27 1927/11/03
  Czechoslovakia
  Extradition

- 1932/01/20
  Portugal
  Supplementary extradition convention to amend the treaty of 1892/10/17

- 1933/09/13 1933/09/30
  Paraguay
  Supplementary Extradition Convention

- 1944/10/02
  Paraguay
  Supplementary Extradition Treaty

- 1959/09/18
  Israel
  Extradition Treaty

- 1968/09/04 1968/09/05
  Swaziland
  Extradition Agreement

- 1969/02/27 1969/03/04
  Botswana
  Extradition Treaty

- 1972/02/25
  Malawi
  Extradition Agreement

- 1976/05/26
  Israel
  Amendment to Extradition Treaty of 1959/09/18

- 1993/09/24
  Swaziland
  Exchange of Notes to amend the Extradition Treaty of 1968/09/4/5

- 1995/06/20
  Lesotho
  Agreement regarding Extradition

- 1995/12/13
  Australia
  Treaty on Extradition

- 1998/12/09
  Australia
  Treaty on Extradition
  Entered into force 2001/08/01

- 1999/09/16
  USA
  Extradition Treaty
  Entered into force 2001/06/25

- 1999/11/12
  Canada
  Treaty on Extradition
  Entered into force 2001/05/01

- 2001/04/19
  Lesotho
  Treaty on Extradition.

- **Countries designated in terms of section 3(2) of the Extradition Act**: Ireland, Namibia, the United Kingdom of Great Britain and Northern Ireland and Zimbabwe.

Extradition treaties negotiated but not yet signed

- Argentina
- Hong Kong
- Hungary
- Namibia
- Nigeria
- Zambia

- The SADC Protocols in Extradition and Mutual Legal Assistance in Criminal Matters were adopted by the SADC Ministers of Justice and will be signed by the Summit during August 2002.

- The African Union Convention on Extradition was finalised during a meeting of legal experts held in Addis Ababa from 4-8 April 2001.

These agreements regulate the rendition of fugitives and offenders in accordance with general principles of international law.

Subparagraph 3 (d):

➢ The CTC would welcome a report on progress on the implementation in South Africa of the relevant conventions and protocols relating to terrorism to which it is already a party and in particular of the International Convention for the Suppression of the Financing of Terrorism, mentioned in the report as being in the course of being ratified. What are South Africa's intentions with regard to the other conventions and protocols relating to terrorism to which it is not yet a party?

1. As indicated in the National Report (S/2001/1281), South Africa is Party to five of the anti-terrorism conventions, namely:

   - Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo 1963.
   - Convention on the Unlawful Seizure of Aircraft, The Hague, 1970.
   - Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal, 1971.
   - Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, Montreal 1971, Montreal 1988.
   - Convention on the Marking of Plastic Explosives for the Purposes of Detection, Montreal, 1991.

2. The four aviation conventions are given effect through the Civil Aviation Offences Act, 1972. As stated in the National Report (S/2001/1281), the Act is currently being amended in order to, *inter alia*, create graver penalties for infringements of the Act, and by analogy, of the relevant Conventions.

3. The Convention on the Marking of Plastic Explosives for the Purposes of Detection is given effect in the Explosives Act, which has been amended.

4. The other international conventions, which South Africa must still ratify, will be given effect to through the proposed Anti-Terrorism Bill.

5. The International Convention for the Suppression of the Financing of Terrorism, the International Convention for the Suppression of Terrorist Bombings as well as the OAU Convention on the Prevention and Combating of Terrorism have proceeded through the first stage of approval for ratification (Cabinet approval) and will now be submitted to both Houses of Parliament in accordance with South Africa's constitutional requirements.

➢ What are South Africa's intentions with regard to the UN Convention Against Transnational Organised Crime?

1. In Section B, paragraph 4.1 (page 19) of the National Report (S/2001/1281), it is stated that South Africa "has the firm intention of submitting each Convention to Parliament for ratification in accordance with its constitutional procedures and ensuring that the necessary legislation to implement each Convention in its domestic law is in place". This intention still remains.

2. It was noted under subparagraph 2 (a), in addition to a general offence for terrorist acts, it is envisaged that the Anti-Terrorism Bill will provide for specific offences in respect of murder, kidnapping, or other attacks upon the person or liberty of an internationally protected person, hostage taking, unlawful possession of nuclear material, acts against international maritime navigation, acts against fixed platforms located on the continental shelf, and the seizure and forfeiture of property suspected of being involved in terrorist activities. It is also envisaged that by creating these offences in the South African domestic law, the way will be paved for South Africa to ratify the Conventions and Protocols it still needs to ratify, such as: the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons; the International Convention Against the Taking of Hostages; the Convention on the Physical Protection of Nuclear Material; the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

Subparagraph 3 (e):

➢ Have the crimes mentioned in the relevant international conventions and protocols been included as extraditable offences in the bilateral extradition agreements, which South Africa has concluded with other countries?

1. South Africa's bilateral treaties do not identify crimes on a list basis and do not therefore make mention of terrorism. The provision in the bilateral treaties reads as follows:

> *"For the purpose of this treaty, extradition shall be granted for conduct which constitutes an offence under the laws of both Contracting States that is punishable by imprisonment for a period of at least one year or by a more severe penalty".*

2. As mentioned above, for extradition to take place, the other Contracting State should therefore also have terrorism as an offence.

Subparagraph 3 (g):

➢ From the copy of the Extradition Act attached to the report, it appears that it is currently possible under South African law for requests for extradition of alleged terrorists to be refused on political grounds. Are there any plans to amend that Act to ensure that is not the case?

1. The Extradition Act does not provide for refusal to extradite on "political grounds". The Act provides for refusal to extradite on, as one of the grounds "political opinion" (section 11). However, bilateral treaties do provide for refusal to extradite on political grounds.

2. As already stated, the Extradition Act provides for refusal to extradite if the Minister is "satisfied that the person concerned will be prosecuted or punished or prejudiced at his or her trial in a foreign State by reason of his or her gender, race, religion, nationality or political opinion".

Paragraph 4:

➢ Has South Africa addressed any of the concerns expressed in paragraph 4 of the Resolution?

1. The South African Government fully agrees that there is a need to enhance co-ordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to terrorism including its close connection with transnational organised crime, illicit drugs, money-laundering, illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials.

2. All of the criminal acts listed in paragraph 4 are covered in the legislative framework in place in South Africa, the relevant Acts and Bills of which are specified under various paragraphs throughout South Africa's National Report submitted pursuant to paragraph 6 of Security Council resolution 1373 (2002) (S/2001/1281). This demonstrates the seriousness with which the South African Government approaches all of these crimes.

3. At the national level an Inter-Departmental Working Group on Counter-Terrorism has been established to enhance co-ordination in response to the serious challenge posed by terrorism and related threats. These are approached in an holistic way and all of the relevant authorities responsible for the implementation of various aspects related to international Conventions and local legislation with regard to terrorism, transnational organised crime, illicit drugs, money-laundering, illegal arms trafficking, and the illegal movement of nuclear, chemical, biological and other potentially deadly materials, are represented on the Working Group. An Inter-Departmental Working Group on Unregulated Foreign Military Assistance and a National Joint Operational and Intelligence Structure has also been established. A committee under the auspices of the National Joint Operational and Intelligence Structure, acting as "Operation Protect", came into operation after 11 September 2001. "Operation Protect" consists of all security services in South Africa and its main aim is investigations into international terrorism.

4. At the subregional and regional levels, co-operation is intensifying over a broad front with the specific aim to combating terrorism and related threats. South Africa participates actively in these endeavours, for example in the context of the Southern Africa Common Monetary Area, various Police Co-operation Agreements, the Border Control Operational Co-ordinating Committee, the Agreement on Mutual Co-operation in the Field of Crime Combating, Mutual Legal Assistance Agreements, preparations underway to co-ordinate the implementation of the Convention of the Organisation for African Unity on the Suppression and Combating of Terrorism, etc.

5. At the international level South Africa co-operates and participates actively in the various international fora where these issues are deliberated.

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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 10 April 2002 (S/2002/398).

The Counter-Terrorism Committee has received the attached supplementary report from Bulgaria, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-50452 (E) 130802

Annex

Letter dated 5 July 2002 from the Permanent Representative of Bulgaria to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit herewith the supplementary report requested by the Counter-Terrorism Committee (your letter dated 1 April 2002) in compliance with paragraph 6 of resolution 1373 (2001).

(*Signed*) Stefan **Tafrov**
Ambassador
Permanent Representative

Enclosure

Supplementary report to the national report on counter-terrorism activities of the Republic of Bulgaria in implementation of resolution 1373 (2001) of the Security Council on measures to be adopted by the United Nations Member States for the suppression of terrorism

In implementation of Article 6 of Resolution 1373 (2001) and in response to the letter of the Chairman of the Counter-Terrorism Committee, # S/AC.40/2002/MS/OC.31 of 1 April 2002 we hereby provide the answers to the additional questions regarding the National Report on Counter-Terrorism Activities undertaken by the Republic of Bulgaria in Implementation of Resolution 1373 (2001).

Sub-paragraphs 1 (b) and (c):

Please provide the CTC with a progress report and an outline of the proposed amendments to the Criminal Code containing a special text on terrorism and of the draft Law on Suppression of Terrorism, introducing a mechanism for freezing financial assets, as referred to in sub-paragraph 1 (e) of the report. Will these new legal provisions provide for freezing of the whole range of funds and other financial assets or economic resources mentioned in sub-paragraph 1 (c)?

The draft amendment to the Criminal Code, which along with the other texts, introduces a legal definition of "terrorism", was approved by the Council of Ministers on 11 April 2002 and since May 2002 has been under discussion at the permanent commissions of the National Assembly. It is expected to be adopted by the beginning of September 2002.

The definition of this concept, in accordance with the draft, has been also envisaged in the draft Law on Measures against Financing of Terrorism, which was approved by the Council of Ministers on 13 June 2002 and has been put forward for consideration by the National Assembly.

The purposes of this law are to prevent and detect financing of terrorism perpetrated by any person or entity. Pursuant to the law, all funds, financial assets and property owned or controlled by persons included in a list adopted by the Council of Ministers shall be frozen, regardless of the fact in whose possession they are. Exempt are only property rights, which according to the legislation in force, cannot be subject to judicial impediment. The Minister of the Interior and the Minister of Finance are entrusted to enforce the law.

Sub-paragraph 1 (d):

- **The report states that the Financial Intelligence Agency has prepared measures for broadening the scope of the system for reporting operations. Please explain if these measures will have the force of law.**

- **Does Bulgaria intend to create legal safeguards to prevent funds received by non-profit organizations such as charities, from being diverted from their stated purposes, for example, to purposes connected with terrorist activities?**

- **The report indicates that measures to identify unlawful systems of alternative payments are being worked out and applied. Please provide additional information on the measures proposed. Do those measures include the regulation by law of alternative payment systems?**

- **Please provide further information on the Ministry of Finance's motion on amendments mentioned in sub-paragraph 1(e) of the report?**

- The measures for broadening the scope of the system for reporting suspicious operations are envisaged in the draft Law on Measures against Financing of Terrorism. An obligation has been created for persons under the Law on Measures against Money Laundering to also report on suspicious operations considered risky in terms of financing terrorist activities. The requirements for identifying, recognizing the customer, keeping the records and reporting according to the Law on Measures against Money Laundering are also applicable in terms of financing terrorism.

- The non-profit organizations are entities, obliged to report under the Law on Measures against Money Laundering. With respect to them such an obligation will arise with the adoption of the Law on Measures against Financing of Terrorism. As entities obliged under these laws they are subject to the control and the sanction competency of both the Financial Intelligence Agency and the Ministry of the Interior under the Law on Measures against Financing of Terrorism.

- The activity concerning payments is regulated in the Law on Banks and the Law on Postal Services. According to the Law on Banks, operations on non-cash payments and clearing of checking accounts of other persons can be carried out only by a bank, licensed and supervised according to the legislation in force. Carrying out bank transactions without a license is considered a crime according to Article 252, paragraph 1 of the Criminal Code. According to the Law on Postal Services, postal monetary transfers are a part of the universal postal service, however their conduct requires license issued by the Commission on Regulating Telecommunications.

Sub-Paragraph 2 (c) :

- **Are there any legal provisions for excluding or expelling terrorists from Bulgarian territory?**

The legal provisions for excluding and expelling terrorists from the territory of the Republic of Bulgaria are contained in the Foreign Nationals Act of the Republic of Bulgaria /promulgated in the State Gazette, issue 153/1998, in force since 27 December 1998, amended in issue 70 of 6 August 1999, in force since 1 January 2000, amended in issue 42 of 27 April 2001, issue 112 of 29 December 2001, in force since 1 January 2002, amended in issue 45 of 30 April 2002, in force since 30 April 2002/.

According to this act, a visa and entry into the country shall be denied to any foreign national for whom there is information that he/she is a member of a criminal group or organization or is involved in a terrorist activity, illicit trafficking and trade in arms, explosives, ammunitions, strategic raw materials, dual use goods and technologies as well as illicit trafficking in intoxicating and psychotropic substances and precursors and raw materials for their production (Article 10, para. 1, sub-para. 3). In these cases, a ban shall be also imposed on the entry in the Republic of Bulgaria (Article 42a).

According to Article 40, para. 1, sub-para. 2 of the same act the foreign national shall be denied the right to stay in the Republic of Bulgaria if there are grounds under Article 10. According to Article 42, expelling foreign nationals is imposed when their presence in the country represents a serious threat to the national security and public order.

According to Article 12 of the Refugees Act, a refugee status or a humanitarian status shall not be granted, and a foreign national shall be deprived of already granted refugees status or humanitarian status:

1. 1. when there are serious grounds to suppose that he/she has committed an act, which, according to the Bulgarian laws and international agreements to which the Republic of Bulgaria is a party, is defined as a war crime or as a crime against peace and humanity;

2. 2. when there are serious grounds to suppose that he/she has committed a severe criminal offence of non-political nature outside the territory of the Republic of Bulgaria;

3. 3. when there are serious grounds to suppose that he/she commits or incites acts contrary to the purposes and principles of the United Nations.

In these cases the Agency for Refugees sends an immediate notice to the Ministry of the Interior which is competent to impose the compulsory administrative measure "expelling" under the Foreign Nationals Act of the Republic of Bulgaria.

Sub-Paragraph 2 (e):

- **Please clarify what are the penalties attached to the crimes constituting terrorist acts under the Bulgarian Criminal Code.**

- **Are all the relevant provisions of the Criminal Code applicable in all of the following circumstances:**

  - **acts committed outside Bulgaria by a person who is a citizen of, or habitually resident in Bulgaria (whether that person is currently present in Bulgaria or not);**

  - **acts committed outside Bulgaria by foreign national who is currently in Bulgaria?**

- According to Article 93, sub-paragraph 7 of the Criminal Code, "severe criminal offence" is a crime for which the law envisages a penalty of imprisonment for more than five years, life imprisonment or life imprisonment without appeal.

Bearing in mind this provision, the corpora delicti in the Special Part of the Criminal Code, which constitute terrorist acts are included under the category severe criminal offences.

According to the Criminal Code, the following penalties are attached to the crimes constituting terrorist acts:

- - depriving of life and inflicting a severe bodily injury to a state or public figure aimed at undermining or weakening the authority or obstructing its power: imprisonment up to twenty years, life imprisonment or life imprisonment without appeal (Article 96, para. 1);

  - severe bodily injury to a state or public figure aimed at undermining or weakening the authority or obstructing its power: imprisonment from five to fifteen years (Article 96, paragraph 2);

  - causing death to one or more persons by fire, explosive, inundation or another dangerous act aimed at undermining or weakening the authority or obstructing its power: imprisonment up to twenty years, life imprisonment or life imprisonment without appeal (Article 96, para. 3);

  - holding a hostage, whose release is dependant on fulfillment of a certain condition by the state, a state or public organization or a third person aimed at undermining or weakening the authority or obstructing its power: imprisonment from three to fifteen years (Article 97a);

  - depriving of life a representative of a foreign state aimed at instigating a war or international complications against the Republic: imprisonment from ten to twenty years, life imprisonment or life imprisonment without appeal (Article 99, para. 1);

  - severe bodily injury to a representative of a foreign state aimed at instigating a war or international complications against the Republic: imprisonment from ten to fifteen years (Article 99, para. 2);

- destroying or damaging public buildings, constructions, installations, equipments, transportation or communication means or other public property of a considerable value aimed at weakening the authority or obstructing its power-sabotage: imprisonment from five to twenty years, life imprisonment or life imprisonment without appeal (Article 106);

- participation, creation or leading an organization or a group, which aims at committing the above mentioned crimes: imprisonment up to twelve years (Article 109, paragraph 1 and 2);

- murdering an official, a representative of the public as well as a serviceman, including one of an allied or friendly state or army, during or in connection with the performance of his duty or function, of a person enjoying international protection as well as murdering in a way or by means dangerous to the life of many: imprisonment from fifteen to twenty years, life imprisonment or life imprisonment without appeal (Article 116, para. 1, sub-para. 1 and 6);

- setting on fire a building, ..., machines, a mine or other property of a considerable value, with qualified corpus, when the fire represents a danger to the life of another person or the property set on fire has a historic, scientific or artistic value: imprisonment from one to fifteen years (Article 330, paragraph 1-3);

- damaging or destroying the property under Article 330 by an explosive: imprisonment from one to fifteen years (Article 333);

- causing an inundation and thereby exposing to danger the life or property of another person: imprisonment from three to fifteen years (Article 334, para. 1 and 2);

- damaging rolling stock or railway lines, an aircraft, an automobile, an electric transport vehicle or equipment, or accessories to them, a tunnel, a bridge or a supporting wall on the roads as well as a ship thereby creating danger for the life of another person or for considerable damage of another person's property: imprisonment from five to fifteen years (Article 340, para. 1);

- destroying an aircraft in operation or inflicting on it a damage that make it unfit for flight or endanger its safety in flight: imprisonment from five to twenty years (Article 340, para. 2);

- endangering the safety of an aircraft in flight by destroying or damaging installation or equipment for flight navigation or by providing false information or giving a false signal as well as by putting up a false sign or removing or shifting a sign intended for securing the safety of movement: imprisonment from three to fifteen years (Article 341a, para.2);

- exerting violence against a person on board an aircraft in flight if this act has been of such a nature as to endanger the safety of the aircraft: imprisonment from five to fifteen years (Article 341a, para. 3);

- unlawfully seizing an aircraft on the ground or in flight or taking control over such an aircraft with various qualified corpora for example when it involves force or threat: imprisonment up to twenty years or life imprisonment without appeal (Article 341b, para. 1-3);

- intentionally causing death, bodily injury or considerable property damage in driving a railway rolling stock, an aircraft, a motor vehicle, a vessel, a combat or special machine and violating the traffic regulations: imprisonment from one to twenty years or life imprisonment (Article 342, para.3);

- removing or shifting to another place a sign or signal intended for securing the safety of movement of railway traffic, water transport and electric transport, as well as, putting up such a false sign or

giving a false signal which endangers the life or the property of a person: imprisonment from two to twenty years, life imprisonment or life imprisonment without appeal (Article 349, para. 1 and 2);

- spreading agents of epidemic diseases for the purpose of infecting people: imprisonment from two to twenty years, life imprisonment or life imprisonment without appeal (Article 349, para. 3);

- preparing foodstuffs or drinks intended for public use in such a way that substances, hazardous to human health, are formed or allowed to enter, as well as selling, or otherwise distributing such foodstuffs or drinks: imprisonment up to fifteen years (Article 350);

- polluting or allowing the pollution of water sources, basins, underground waters, territorial and inland sea waters, the soil and the air, thereby, rendering them hazardous to people, animals, and plants or making them unfit for use: imprisonment up to fifteen years (Article 352, para. 1);

- acquiring, holding, appropriating or giving to another person, without due permission, highly active or poisonous substance, which is not narcotic, placed under permit regime, as well as, violating rules regulating the production, acquisition, safekeeping, accounting, prescribing, transportation or carrying of such substances: imprisonment up to three years (Article 354);

- damaging nuclear material, nuclear equipment or another source of ionizing radiation, thus causing considerable property damage or damage to the environment or creating danger for the life and health of another person: imprisonment from five to fifteen years; In case that death was caused, the penalty shall be imprisonment from ten to twenty years, life imprisonment or life imprisonment without appeal (Article 356e).

In accordance with Article 110, 117 and 356a of the Criminal Code, the preparation of the above mentioned crimes shall also be punished (the penalty for preparation of these crimes shall be imprisonment up to five or from three to eight years).

The draft Law on Amendment to the Criminal Code, whose adoption is forthcoming, envisages a new corpus delicti — Article 108a, para.1, covering 23 severe criminal offences, designed to fulfill special purposes, are defined as terrorist acts. According to the draft law, the sanction for terrorism is imprisonment from five to fifteen years and in the case of inflicted death — imprisonment from fifteen to thirty years, life imprisonment or life imprisonment without appeal.

According to para. 2 of Article 108a, gathering and supplying means for perpetration of terrorist acts is considered a crime and the envisaged punishment is imprisonment from three to fifteen years and a fine of 30 000 BGL.

According to para. 3 of Article 108a, the object of the crime under para. 2 shall be confiscated.

According to Article 110 of the draft, the preparation for perpetration of the crime under Article 108a, para. 1 is considered a crime, thereby, imprisonment up to six years is envisaged.

According to Article 114 of the draft, the court may enact confiscation of a part or the whole property of the guilty under Article 108a.

According to Article 320, para. 2 of the draft, instigation of a crime under Article 108a, para. 1 is considered a crime, thereby, the punishment is imprisonment up to six years.

According to the draft, the threat to commit a crime under Article 108a, para. 1 is considered a crime and Article 320a envisages for such a crime imprisonment up to two years.

- According to Article 3, para.1 of the Criminal Code, it is applicable to all crimes, committed on the territory of the Republic of Bulgaria. The Criminal Code is applicable to Bulgarian citizens for crimes committed by them outside the country (Article 4, para. 1); to foreign nationals who have committed crimes outside the country, but these crimes affect the interests of the Republic of Bulgaria or of Bulgarian citizens (Article 5); to foreign nationals who have committed crimes against peace and humanity outside the country and, thus, affect the interests of another country or foreign citizens (Article 6, para. 1); as well as, other crimes committed by foreign nationals outside the country, when this is envisaged in an international agreement to which the Republic of Bulgaria is a party.

Moreover, according to Article 356b, a foreign national who makes preparations on the territory of the Republic of Bulgaria to perpetrate generally dangerous crimes outside the country (which might as well be terrorist acts) shall be punished by imprisonment up to five years. If for the same purpose an organization or a group has been set up, the punishment shall be imprisonment from one to six years, and for the organizers and the leaders – from three to eight years.

Sub-Paragraph 2 (f):

- **Apart from the European Convention on Mutual Assistance in Criminal Matters, to which agreements on co-operation and assistance in judicial and criminal matters is Bulgaria party?**

Apart from the European Convention on Mutual Assistance in Criminal Matters, Bulgaria is also party to the European Convention on the Suppression of Terrorism, the European Convention on Extradition, the European Convention on Transfer of Convicted Persons (the above mentioned conventions have been adopted within the framework of the Council of Europe). Moreover, the Republic of Bulgaria is party to a number of multilateral conventions which regulate legal assistance,, as well as extradition on respective criminal cases (OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Criminal Law Convention of the Council of Europe on Corruption, the UN Convention against Transnational Organized Crime and the two additional protocols).

Moreover, Bulgaria has concluded 24 bilateral agreements for legal assistance in criminal matters (Azerbaijan, Armenia, Algeria, Viet Nam, Georgia, Greece, Spain, Yemen, Cyprus, China, Korea, Kuwait, Cuba, Libya, Mongolia, Poland, Romania, Syria, the former Soviet Union, FR of Yugoslavia, Turkey, Tunisia, Hungary, Czechoslovakia);

Sub-Paragraph 2 (g):

- **Does the inter-agency mechanism for collecting, processing and spreading information on preparation for or commission of terrorist acts, mentioned in the reply to sub-paragraph 2(a), also provide for co-operation with border and narcotics control authorities, in regard to border control?**

Under the Ministry of the Interior, a National Service for Detecting and Preventing Terrorist Activities on the Territory of the Republic of Bulgaria has been established and has been functioning since October 2001, which collects, analyzes and processes information, supplied by the relevant competent institutions.

The analyses made on the basis of the acquired information are available for use by all interested institutions and organizations, including the border and narcotic control authorities.

Sub-paragraph 3 (c):

- **Please describe how the international conventions and protocols to which Bulgaria is a party have been incorporated into domestic law.**

In accordance with Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria, the ratified international agreements become part of the domestic law and have priority to those norms of the domestic legislation which contradict them.

According to the information provided on sub-paragraph 2 (e), it becomes clear that criminal penalties are envisaged in the Criminal Code for acts considered crimes under the international conventions. Moreover, the Code of Criminal Procedures envisages that in reference to the legal assistance in criminal matters and extradition, the provisions of the international agreements have priority to the rules of this Code.

Sub-Paragraph 3 (e):

- **Please provide a progress report on the ratification of the Convention for the Suppression of the Financing of Terrorism.**

- **Please indicate whether the crimes set forth in the relevant international conventions have been included as extraditable offences in the bilateral treaties which Bulgaria has concluded with other countries.**

- The international Convention for the Suppression of the Financing of Terrorism, signed on 19 March 2001 in New York, was ratified by law, promulgated in the State Gazette, issue 11 of 31 January 2002, the instrument of ratification was deposited in the UN on 15 April 2002.

- The criminal offences under the relevant international conventions are included in the bilateral agreements as crimes for which extradition can be requested.

Sub-Paragraph 3 (f):

- **Please provide a progress report on the draft law on asylum and refugees which is under preparation.**

The Law on Asylum and Refugees was adopted by the National Assembly on 16 May 2002 and was promulgated in issue 54 of the State Gazette. It will enter into force 6 months after its publication – on 1 December 2002 and will repeal the current Refugees Act.

Sub-Paragraph 4:

- **Has Bulgaria addressed any of the concerns expressed in paragraph 4 of the resolution?**

Bulgaria recognizes the close connection between international terrorism and transnational organized crime in all its forms, and in this regard emphasizes the need to enhance coordination of efforts on national, sub-regional, regional, and international levels in order to strengthen a global response to this serious challenge and threat to international security. The bilateral and multilateral agreements, concluded by the country to which the Republic of Bulgaria or the Ministry of the Interior are party, contain clauses for cooperation in combating international terrorism and transnational organized crime. Annex 1 contains the main agreements which are directly related to that issue.

The possibility for a membership of the Republic of Bulgaria in the Financial Action Task Force /FATF/ or obtaining a possible status as an observer to this organization is under consideration.

A Regional policy forum entitled International Cooperation in Countering Terrorism was held in Sofia on 27 June 2002. Within the framework of Round Table I the issue on Suppressing Terrorism and Transnational Organized Crime was discussed.

Other matters:

- **Could Bulgaria please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.**

We are bringing to your attention the organizational charts of the main institutions involved in the fight against terrorism:

1. Ministry of the Interior of the Republic of Bulgaria – Annex 2.
2. Financial Intelligence Agency – Ministry of Finance – Annex 3.
3. Customs Agency – Ministry of Finance – Annex 4.
4. General Tax Directorate – Ministry of Finance – Annex 5.
5. Agency for Refugees – Council of Ministers – Annex 6
6. State and Local Financial Control – Ministry of Finance – Annex 7.

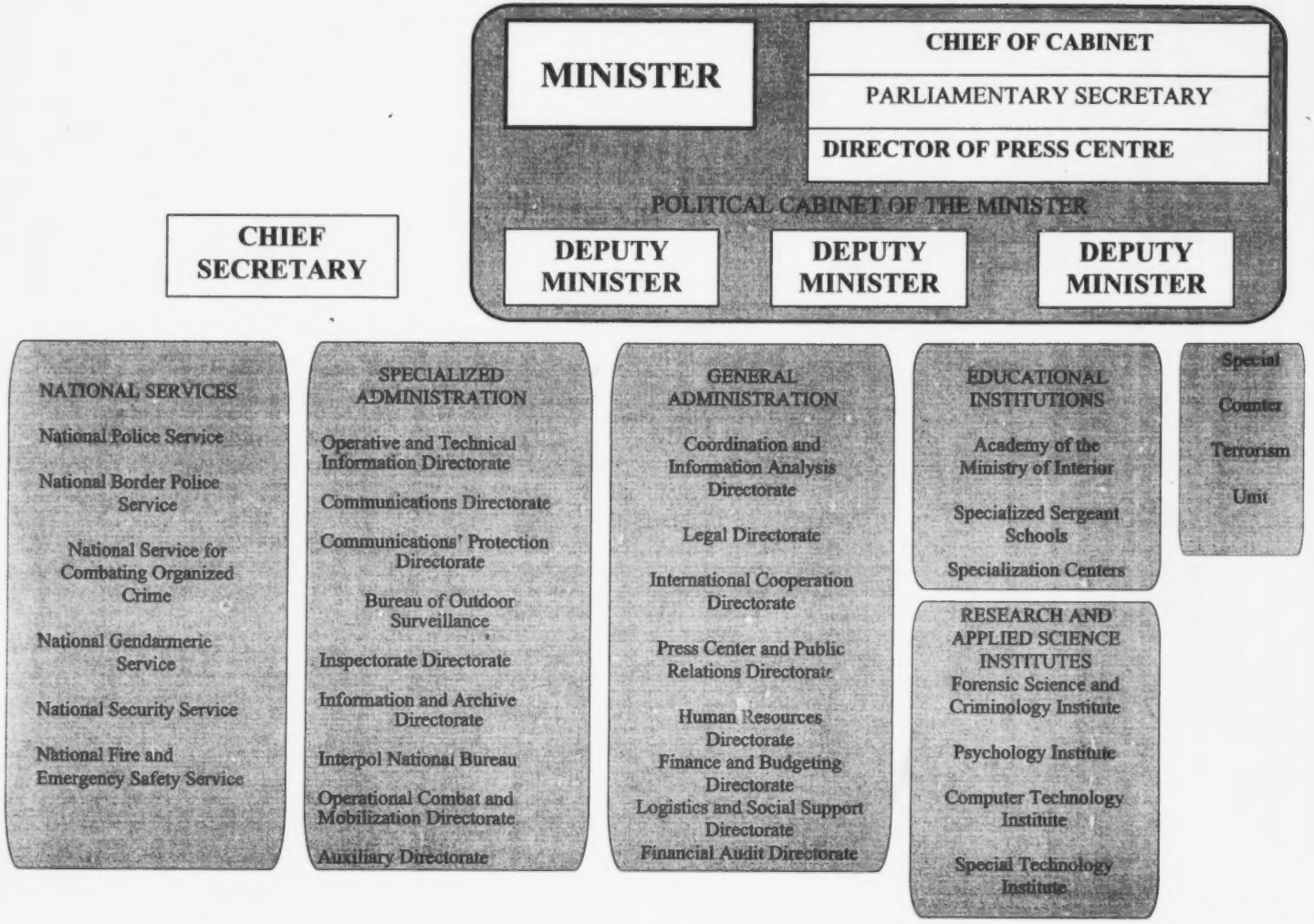
Annex 1

LIST OF BILATERAL AND MULTILATERAL INTERNATIONAL AGREEMENTS CONTAINING CLAUSES ON COOPERATION IN COMBATING INTERNATIONAL TERRORISM AND TRANSNATIONAL ORGANIZED CRIME*

* Annex 1 is on file with the Secretariat and is available for consultation.

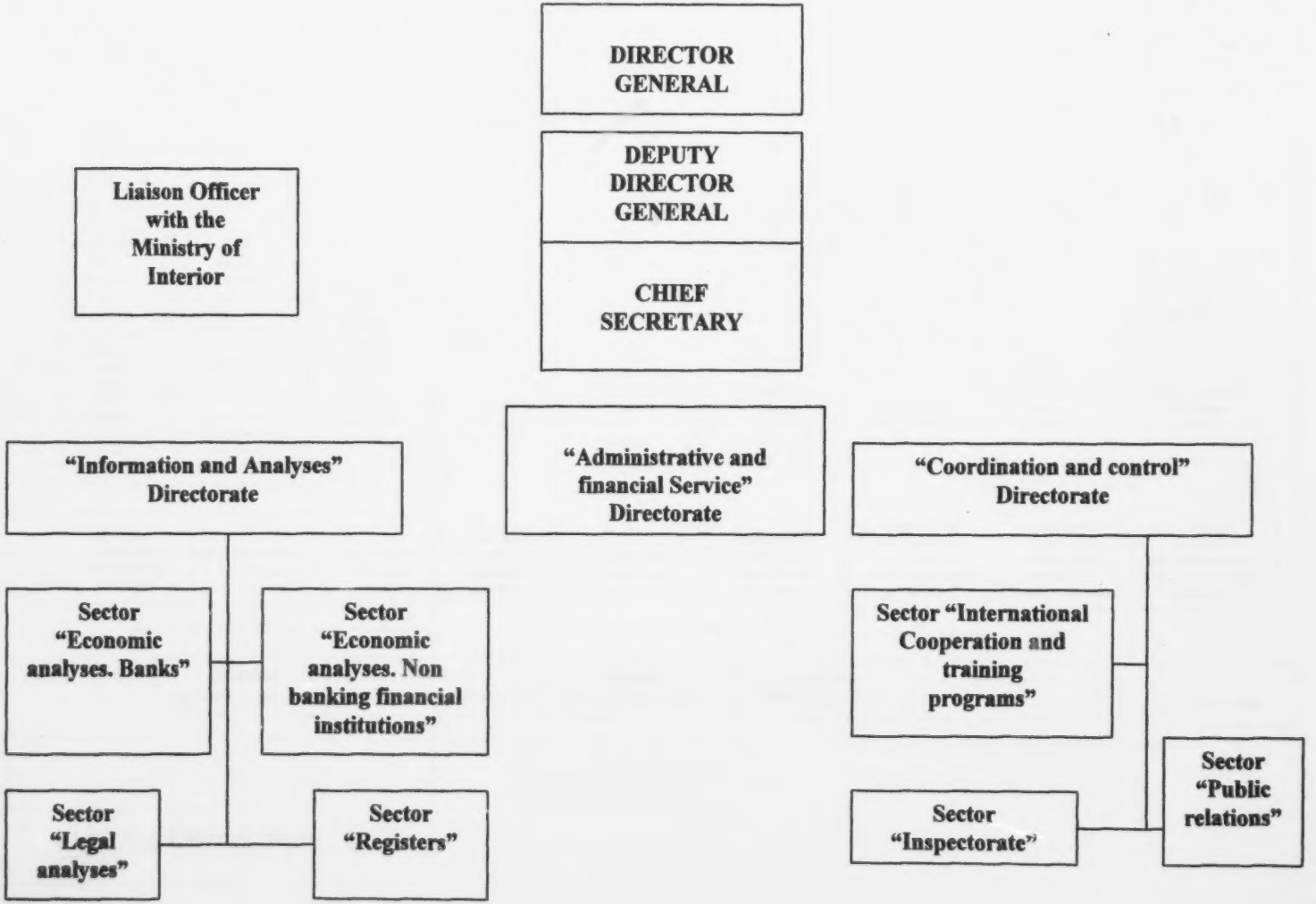
Annex 2

MINISTRY OF INTERIOR OF THE REPUBLIC OF BULGARIA



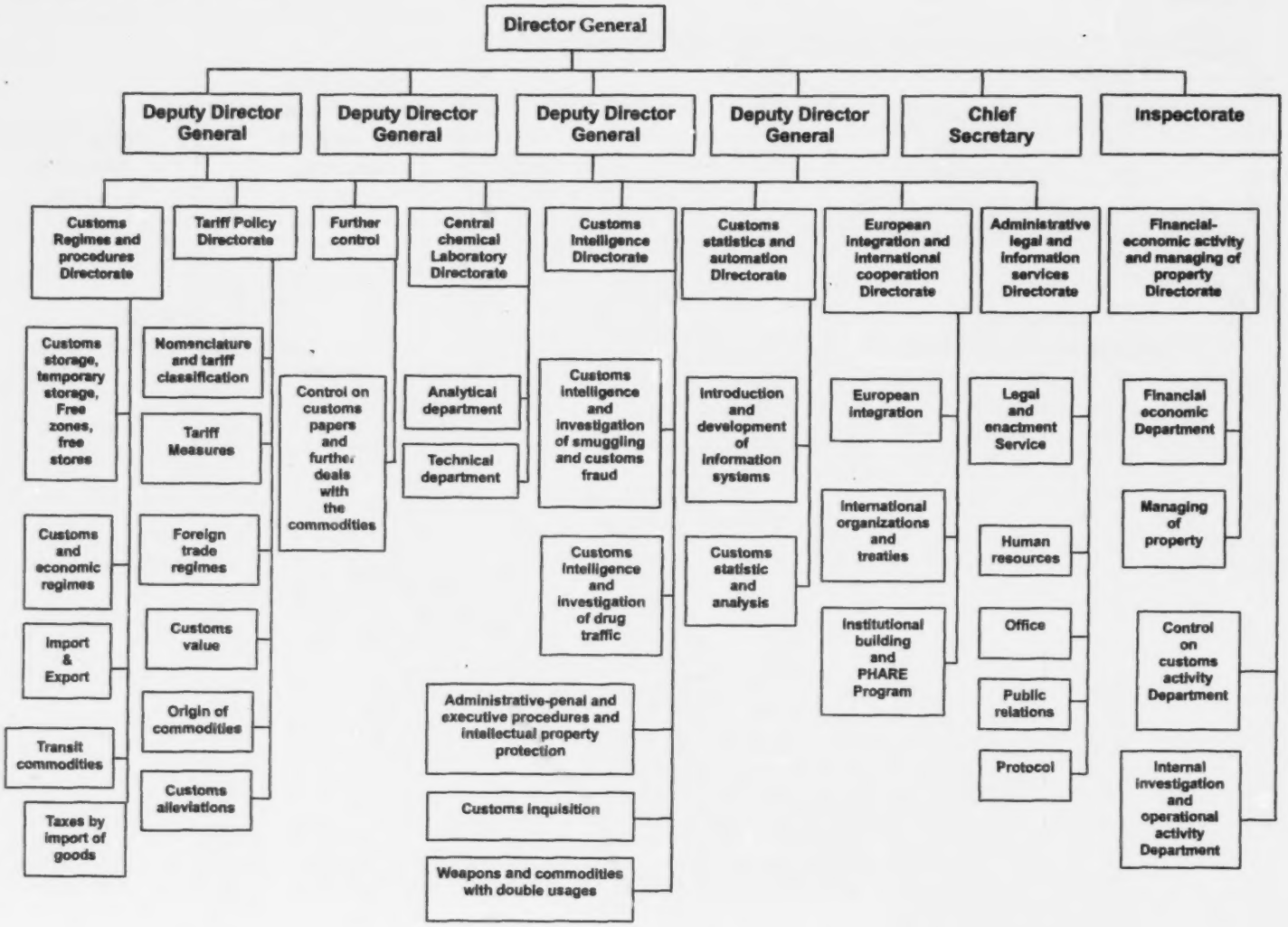
Annex 3

STRUCTURE
BUREAU OF FINANCIAL INTELLIGENCE AGENCY



S/2003/793

Annex 4
Structure of Customs Agency



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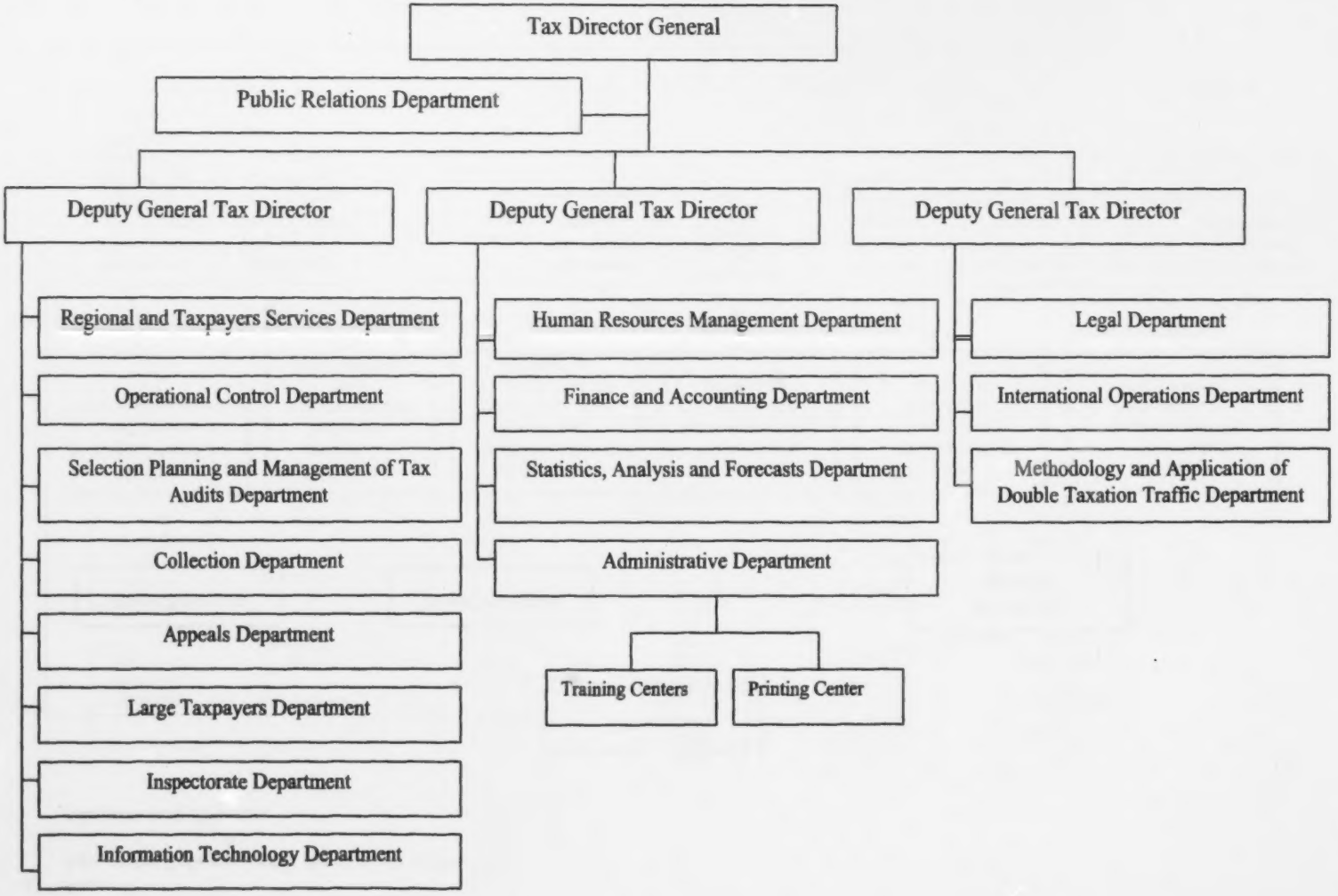
Annex 5

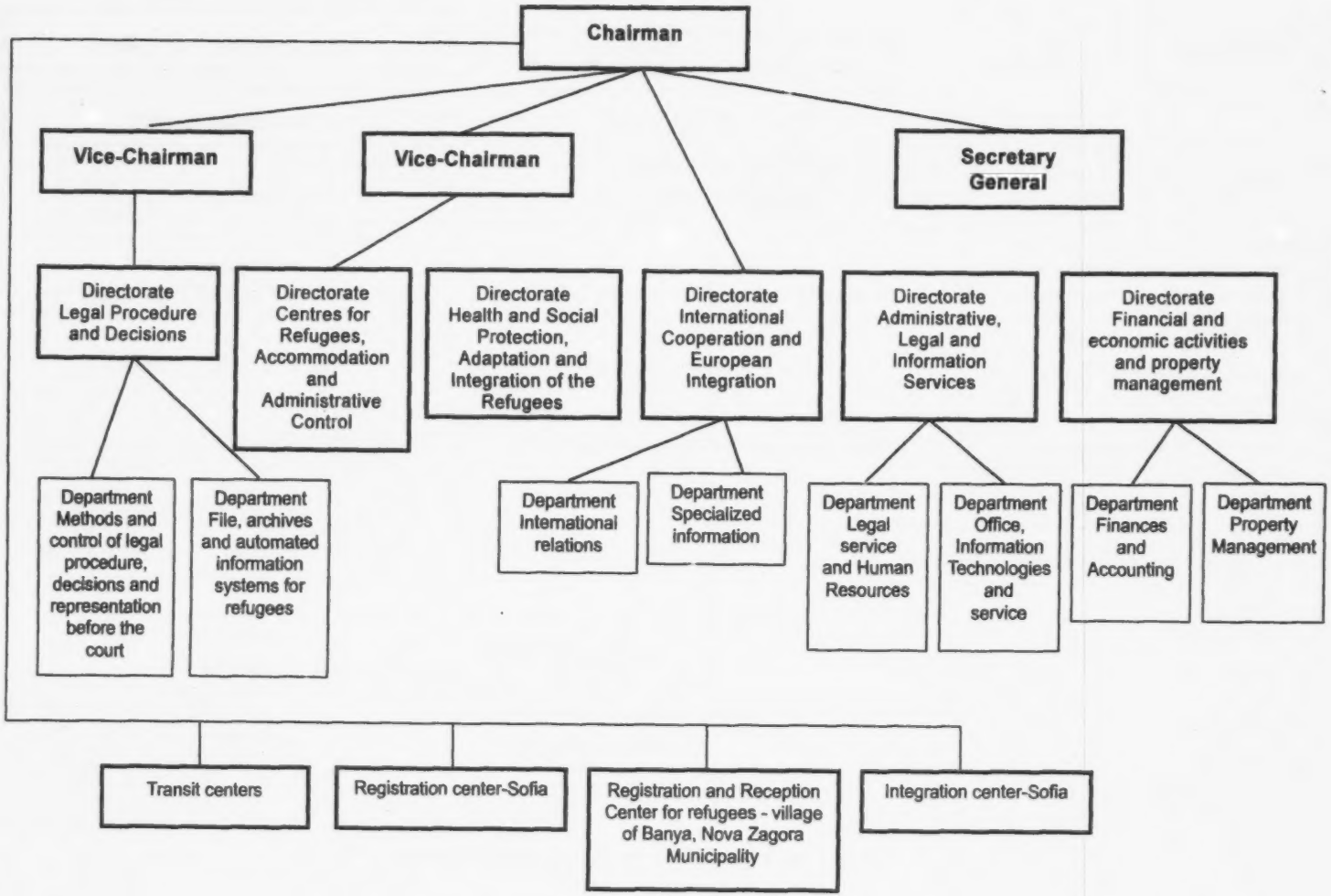
Financial Structure of the General Tax Directorate



Annex 6

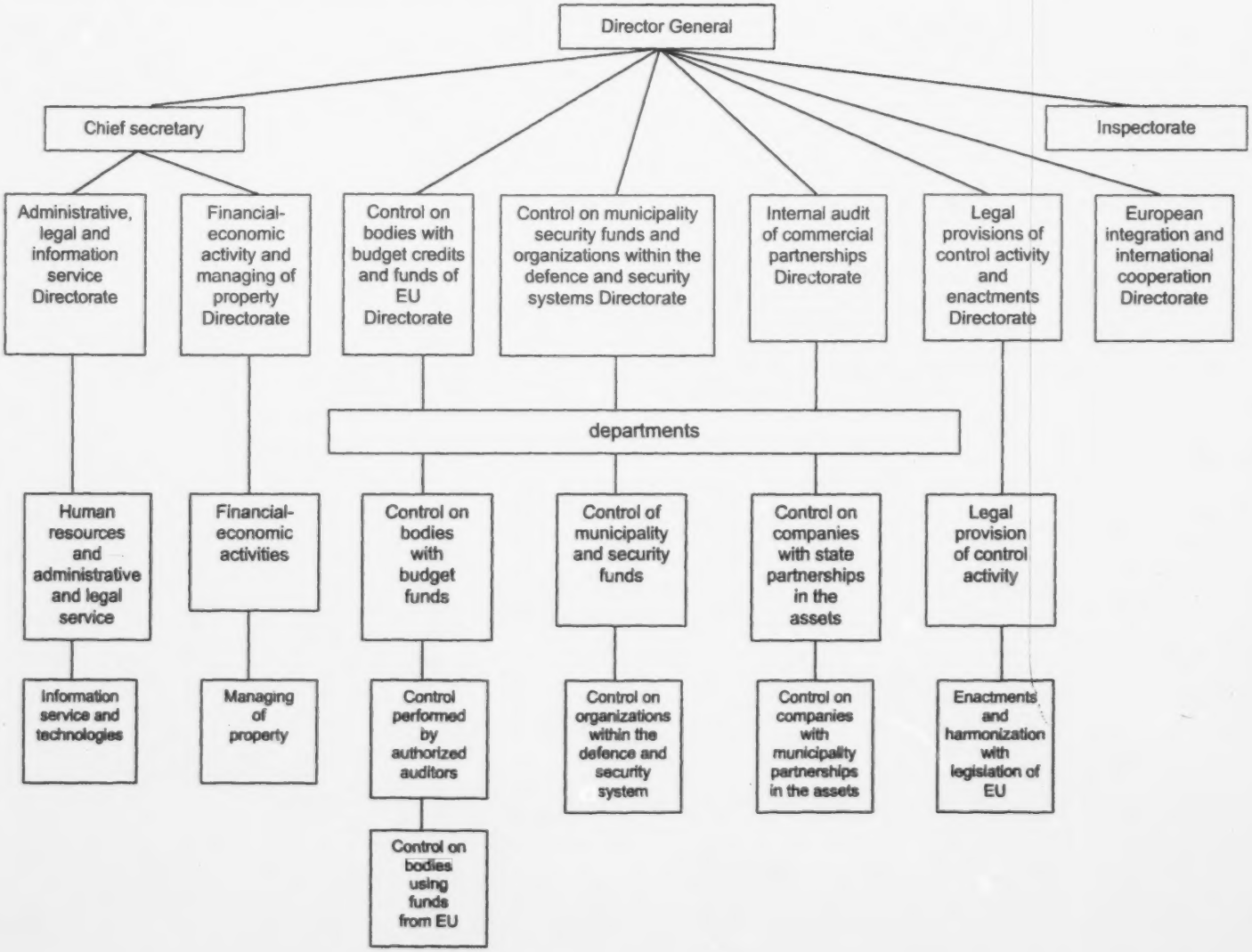
Agency for Refugees under the Council of Ministers

Administrative Structure


Chairman
Vice-Chairman
Vice-Chairman
Secretary General
Directorate Legal Procedure and Decisions
Directorate Centres for Refugees, Accommodation and Administrative Control
Directorate Health and Social Protection, Adaptation and Integration of the Refugees
Directorate International Cooperation and European Integration
Directorate Administrative, Legal and Information Services
Directorate Financial and economic activities and property management
Department Methods and control of legal procedure, decisions and representation before the court
Department File, archives and automated information systems for refugees
Department International relations
Department Specialized information
Department Legal service and Human Resources
Department Office, Information Technologies and service
Department Finances and Accounting
Department Property Management
Transit centers
Registration center-Sofia
Registration and Reception Center for refugees - village of Banya, Nova Zagora Municipality
Integration center-Sofia

Annex 7

Central Office of the "State and Local Financial Control" Agency, Sofia


Director General
Chief secretary
Inspectorate
Administrative, legal and information service Directorate
Financial-economic activity and managing of property Directorate
Control on bodies with budget credits and funds of EU Directorate
Control on municipality security funds and organizations within the defence and security systems Directorate
Internal audit of commercial partnerships Directorate
Legal provisions of control activity and enactments Directorate
European integration and international cooperation Directorate
departments
Human resources and administrative and legal service
Financial-economic activities
Control on bodies with budget funds
Control of municipality and security funds
Control on companies with state partnerships in the assets
Legal provision of control activity
Information service and technologies
Managing of property
Control performed by authorized auditors
Control on organizations within the defence and security system
Control on companies with municipality partnerships in the assets
Enactments and harmonization with legislation of EU
Control on bodies using funds from EU

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